UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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UNITED STATES OF AMERICA,	Case No. 1:13-cr-141
	Case No. 1:15-cv-777
Plaintiff,	
- v -	Tuesday, August 30, 2016
	10:00 A.M. Hearing
GLEN GALEMMO,	
Defendant.	**Evidentiary Hearing (via video)**

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA S. BECKWITH, SENIOR JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE
BY: Timothy S. Mangan, Esq. (AUSA)
and Emily N. Glatfelter, Esq. (AUSA)
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For the Defendant: FEDERAL PUBLIC DEFENDER'S OFFICE
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Courtroom Clerk: Mary C. Brown

Court Reporter: Mary Ann Ranz
810 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

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TUESDAY, AUGUST 30, 2016

P R O C E E D I N G S (10:49 A.M.)

THE CLERK: Please be seated.

Case number CR-1-13-141: *United States of America versus Glen Galemmo*.

THE COURT: The purpose of our hearing today is to determine whether or not Mr. Galemmo is entitled to a delayed notice of appeal, in particular to determine on the basis of credibility whether he directed counsel to file a notice of appeal on his behalf in a timely fashion within the normal 14-day period following the entry of judgment, and when did he discover that no notice of appeal had been filed.

Just as a matter of clarification, there was the forfeiture appeal pending, and there was some question about whether or not that matter would affect this proceeding, or vice versa.

I think that there is no impact on the forfeiture proceedings, since they're now closed by virtue of the Court of Appeals' decision on this proceeding, but if anyone feels differently, this is your opportunity to speak.

MR. SCHAD: Your Honor, Kevin Schad on behalf of the petitioner, Mr. Galemmo.

We understand that we received a copy of the appellate decision and understand the decision that was made by the Sixth Circuit. Obviously, Mr. Galemmo's raised issues with regards to amount of loss and restitution in his 2255, but that doesn't affect what was decided in that forfeiture proceeding before the Sixth Circuit Court of Appeals with regards to that particular issue.

THE COURT: Okay.

MS. GLATFELTER: Emily Glatfelter for the United States.

And so just to clarify on the record, if we go forward with the process of distributing the forfeited -- the forfeited property to the victims, we are okay to do that; no one is going to object at this point if we go forward with that process.

MR. SCHAD: And that amount is, I believe, around $5 million; is that correct?

MS. GLATFELTER: It's between 5- and $6 million. There's still one -- the proceeds of one property sale that are being calculated and --

MR. SCHAD: And the forfeiture, Glen, is the forfeiture that you -- those items that you agreed to as part of forfeiture in the plea agreement.

THE DEFENDANT: Correct. But I also would like to state that in a lot of those proceedings, it's been brought up the restitution number is incorrect. And if that's the way they're distributing the money, that is, in my opinion, I want to state it for the record, it's incorrect.

MR. SCHAD: And just to clarify, we're not talking about restitution at this point; we're just talking about the forfeiture.

The United States, is my understanding, is entitled to the forfeiture which is separate from the restitution. How they handle the forfeiture in terms of returning it to victims is a decision that they can make on their part.

THE DEFENDANT: Correct. But through Judge Barrett's -- through things that I filed through Judge Barrett, I brought up numerous questions and concerns that the actual victims are being victimized by the process. I just want everyone to know that and I would like to have it on the record.

THE COURT: Okay. Well, that's not a matter that's before us today, so I think we can proceed.

And any opening remarks that you'd like to put on the record before we begin?

MR. SCHAD: No, Your Honor. We would waive opening at this time.

MS. GLATFELTER: We would, too. I just have a clarification regarding the order of the witnesses. I understand that the petitioner intends to call Mr. Dusing and the petitioner. I would ask --

I understand that petitioner can call witnesses in whatever order he wants, but if he wants to be part of the proceeding and hear what the other witnesses say, I would ask that he testify first before, because this is a credibility issue in terms of the claims being made and, therefore, would ask that Mr. Galemmo testify first.

MR. SCHAD: Your Honor, our position is that we're going to call Mr. Dusing as one of our witnesses. We have the burden of production and persuasion and we can call those witnesses in whichever order we see fit.

THE COURT: Well, Ms. Glatfelter makes a substantive point about why the order of the witnesses should be as she requests. I'm not hearing any argument from the defendant side as to why it should be otherwise.

MR. SCHAD: Well, Your Honor, in a criminal case, we're entitled to call the defendant last after he has heard all of the -- virtually all of the Government's case. And in this -- in this case, we -- just like the Government in a -- in a criminal prosecution, they have pretty much an unfettered right to call witnesses in whatever order they see fit. They generally do have a witness who is a summary witness or a case agent who sits at the -- sits at the witness -- or at the table, listens to all the Government's testimony and then testifies last. And that's what normally happens in a criminal case, and we've never argued that somehow that witness has been tainted by all the testimony preceding up to that point.

And in our case, if there is a defense case, certainly in a criminal matter we're allowed to call enumerable witnesses that are relevant to the case prior to the time we call the defendant, and the defendant's entitled to hear all of the prosecution's case, all of the defendant's case, and then testify.

In this situation, again, I have the burden of production and persuasion that I think are preliminary that I need to get out from Mr. Dusing that will probably simplify a little bit the testimony of Mr. Galemmo, and I think we have a constitutional right to try the case in the matter we see fit.

THE COURT: Any response?

MS. GLATFELTER: I would say the circumstance's a bit unique. It's different than trial circumstances where a summary witness from the Government typically is not -- it does not come down to a credibility issue. Only with respect to two sides of a particular story where they're both eyewitnesss is what we have here, and so we have two -- two stories that are completely different. And to have separation of witnesses that is at the defendant's request, or petitioner's request -- we have separation of witnesses, all except this witness -- and it's unfair for this witness to hear everyone's testimony or to hear others' testimony and then testify afterwards.

THE COURT: Okay. I'll let the defense call whomever they like in whatever order they like.

MR. SCHAD: Thank you, Your Honor.

And we would call Ben Dusing as our first witness.

THE COURT: Okay.

THE CLERK: Please raise your right hand.

(Witness duly sworn by the Clerk.)

THE CLERK: Please be seated.

BENJAMIN G. DUSING, ESQ.

a witness herein, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHAD:

Q. Good morning, Mr. Dusing.

And could you please give your full name for the record?

A. Yes. My name is Benjamin, B-E-N-J-A-M-I-N, middle initial Gerald -- middle initial G., Gerald, Dusing, D-U-S-I-N-G.

Q. What is it you do for a living?

A. I am an attorney.

Q. And are you a criminal attorney, civil attorney, both?

A. Practice primarily in the white-collar criminal defense practice area.

Q. And as a defense attorney, how many federal criminal cases have you handled?

A. Oh -- dozens. I'm not sure. Over 50, maybe, I think.

I'm sorry. Can you repeat the question? Federal case?

Q. Yes. Federal criminal cases as a defense attorney.
A. Tough to approximate, but quite a few. Quite a few.
Q. Fair enough.
And do you recognize the petitioner in this case?
A. I do.
Q. How do you recognize him?
A. Mr. Glen Galemmo is a former client of ours.
Q. How long did you represent Mr. Galemmo?
A. I don't remember the specific time frame, but for maybe -- maybe almost a year during -- in his -- in a white-collar criminal matter that was pending against him.
Q. Was there anybody else that represented Mr. Galemmo during that time?
A. Well, I would clarify that our firm represented Mr. Galemmo, and so in that sense there were other lawyers at my firm that were involved in his representation.
Q. And can you name those other lawyers that were involved in his representation?
A. Primarily Angela Hayden, my partner and colleague, and I do not remember anyone else off the top of my head at this time.
Q. And were you the primary attorney for representation of Mr. Galemmo in the criminal matter?
A. I would say so, yes.
Q. Did you represent Mr. Galemmo in the preparation of a plea

agreement that he ultimately signed?
A. I represented him in connection with the negotiation and execution of that plea agreement, yes.
Q. And did you have input in the content of that plea agreement?
A. To the extent that a defense side practitioner can have input into a federal white-collar plea agreement, I did, yes.
Q. And the plea agreement, I believe, is in front of you. I believe it's labeled Attachment 1.
A. Okay.
Q. If you could just take a look at that.
MR. SCHAD: And these are Joint Exhibits, for purposes of the record.
Q. It's Joint Exhibit 1. Can you tell me is that a true copy of the plea agreement that you ended up signing with Mr. Galemmo in the United States -- in this matter?
A. It appears to be, yes.
Q. Okay. Did you have conversations with Mr. Galemmo about the right to appeal before he signed this plea agreement?
A. Absolutely.
Q. Okay. Can you tell me a little bit about those conversations?
A. Well, I do not remember necessarily all of the specifics of those conversations, but I do recall that they occurred.
Q. Okay. Let me take you to what is page 5 of that document.

On the top it says page 5 of 16.
A. Okay.
Q. And you'll see a No. 9 that says Waiver of Appeal. I'd ask that you just take a look at that really quick and see if you recall that particular part of the plea agreement.
A. I do.
Q. Okay. And do you recall any conversations that you had with Mr. Galemmo with regards to that particular portion of the plea agreement?
A. I do, in a general way.
Q. Okay. Can you tell the Court in a general way what the content of those conversations was?
A. Before I do that, may I inquire? I'm sensitive to any attorney-client privilege concerns, and to the extent that this is a delicate proceeding, I don't want to overstep my bounds.

THE COURT: I think that Mr. Galemmo has raised the issue of ineffective assistance of counsel and thereby waived the attorney-client privilege, so you may proceed.

THE WITNESS: Thank you, Your Honor. Just as a bit of caution.
A. So to answer the question, obviously, the waiver of a federal criminal defendant's right to appeal is a serious issue and one that certainly is to be understood by the defendant before entering into a plea agreement that requires

the waiver of such a right, so that is a provision that is, in my experience, customary for the government to request and one that is as a matter of practice always a focus of our conversations with the client, and it certainly was in the case of Mr. Galemmo.

Q. Okay. And so that -- that's an overview of your general practice.

Do you have any specific recollection of the actual conversations that you had with Mr. Galemmo with regards to this provision?

A. I recall one specific conversation, but it was after the fact. It involved -- it did not involve the -- the negotiation of the provision.

Q. So not prior to the time he signed it?

A. I recall, certainly, multiple conversations generally. I recall no conversations specifically.

Q. Fair enough. Fair enough.

In that appeal waiver provision, is that what you would consider a complete appeal waiver?

A. No, it is not.

Q. Okay. What was still available for Mr. Galemmo to appeal, in your mind, with regards to that particular provision?

A. I'm not sure I understand the question.

Q. So, in other words, you said it wasn't a complete appeal waiver.

A. Right.
Q. So I take that to mean that there were things that Mr. Galemmo could still appeal even with this provision in the plea agreement?
A. Depending on how the Court sentenced the defendant, that's correct. In my experience, it's customary for the government to request -- in some cases one might say "require" -- a defendant waive his appellate rights in connection with a -- with offering a plea agreement to -- to a federal criminal defendant. My experience typically is that provision is unqualified.
In this particular case, we were successful in persuading the Assistant U.S. Attorneys representing the government in the case to accept a more modified version of that; it allowed for appeal in certain circumstances.
Q. And I guess that's what I'm trying to get at. What were the certain circumstances that you understood could still be appealed as a result of this waiver?
A. The singular circumstance that is laid out in paragraph 9 of the plea agreement, which is if the Court imposed a sentence that exceeded 188 months.
Q. So other than that one provision then, was there anything else to your understanding that could be appealed?
A. No.
Q. How about if the plea was involuntary?

A. I'm sorry?
Q. How about if the plea was involuntary: Could that be appealed?
A. Well, I guess to my mind that involves sort of a -- it goes to the validity of the plea itself and not sort of the enforcement of same.
Q. Then could that have been appealed if Mr. Galemmo wanted to appeal that issue?
A. My -- we're getting -- my understanding of --
Certainly there are avenues that Mr. Galemmo could allege after the fact that his plea agreement had been entered into involuntarily. I don't know that that would necessarily involve --
In my mind, that is not an appeal, per se.
Q. And I am --
Let me clarify. I am trying to get into what your understanding was at the time when -- at the time you entered into this agreement, that Mr. Galemmo entered in this agreement and the advice you gave him.
So how, if the prosecutor engaged in misconduct during the sentencing hearing, would that be able to be appealed despite this waiver?
A. I -- my difficulty's with the choice of words.
Could that issue be raised? Certainly, that's the case, and that's -- I don't remember any discussions about that

specifically, to be clear. But to me that's not an appeal.
Q. And maybe I need to clarify. I'm not talking about a winning appealable issue.
What I'm asking you is whether it could be appealed and survive any motion to dismiss based upon this appellate waiver. In other words, it goes -- it goes to a full briefing on appeal.
Because what I'm trying to get at, Mr. Dusing, is the advice that you would have provided to Mr. Galemmo at the time and after this plea agreement was signed with regards to his appellate rights.
A. Okay. So with respect to his appellate rights, generally speaking, that advice would have been and in fact was -- I do generally remember because this was a fairly substantial matter and, frankly, a public one; it was in the limelight, if you will. But in any case, it is important that, you know, the client understand the implication of every provision of the plea agreement, but in particular certain more important ones, and waiver of appellate rights is certainly on the list of very important ones.
So the advice --
But the discussion that was had about the appellate waiver provision really was to --
I don't know that it's necessarily complicated in terms of understanding it, but certainly understanding the significance

of it, there was emphasis provided in the discussion. In other words, he was advised that if you accept this --

Paragraph 9 of the plea agreement means that if -- if the Court imposes a sentence less than 188 months or up to 188 months, you cannot take an appeal, you cannot challenge that sentence on appeal. And that's --

Q. That was the advice you provided?

A. On -- correct, with respect to -- to the appellate rights.

Q. Let me -- let me ask you one more question on that and then I'll get off that topic.

How about the amount of restitution? If the amount of restitution --

The appeal waiver provision doesn't talk anything about restitution. It just talks about the sentence of incarceration that's imposed.

What if the -- what if Mr. Galemmo wanted to challenge the amount of restitution: Does that appeal waiver provide that he can't appeal that?

A. Well, I don't remember that that was asked or discussed specifically. But if you're asking my --

Q. That's actually the answer to my question. You don't remember whether it was discussed?

A. Restitution was discussed. Whether you could appeal rest -- and more generally, the advice given to Mr. Galemmo with respect to paragraph 9 was if you are sentenced to a term of imprisonment of that -- that does not exceed 188 months, your appellate rights will be waived --

Q. Okay. Fair enough.

A. -- which would -- yes, okay.

Q. Thank you.

All right. I'd like to take you to prior to sentencing at this point. So now you've entered into this -- Mr. Galemmo's entered into this plea agreement and he's come before the Court and pled guilty and we're getting ready for sentencing.

What were the main issues for sentencing purposes that you were objecting to?

A. Well, there were a few, but off the top of my head I would say the main issue or a main issue was the calculation of the amount lost for purposes of calculating the advisory Sentencing Guidelines under the Federal Sentencing Guidelines.

Q. And you also objected to the restitution figure as well; did you not?

A. Correct.

Q. Okay. And you -- during the sentencing hearing in this matter, I believe it was a two-day sentencing hearing, you persisted in that objection to the restitution figure?

A. That's -- that's correct.

Q. Okay. Now, did you up to -- between the time you entered your -- the plea agreement and the time of sentencing, were there any discussions about a potential appeal with

Mr. Galemmo?
A. None other than to remind the client that those rights would be limited potentially based upon the length of a sentence imposed.
Q. Now, on the day of the sentencing hearing you had an in-chambers hearing or meeting with the judge and the prosecutor and the defendant; is that correct?
A. I recall -- my memory, it was on the record.
Q. But it was in chambers?
A. It was physically in chambers, yes.
Q. And at that either -- at that hearing, or immediately after that hearing, did you have any discussion about an appeal at that point?
A. I don't remember. Not to my memory.
Q. Okay. So sentencing hearing lasted over -- it occurred over a two-day period. At the end of the second day, the judge informs Mr. Galemmo of his right to appeal.
Do you recall making any statement to the Court that you would protect his right to appeal should he choose to do so?
A. I don't specifically remember that, but I haven't reviewed the transcript. And if the transcript reflects that, I have no reason to dispute it.
Q. Fair enough.
And after -- immediately after that hearing, while you were still in the courtroom, did you have any discussions with

Mr. Galemmo with regards to appeal at that point?
A. None that I can recall.
Q. Do you recall going to another room and meeting with Mr. Galemmo and then eventually members of his family after the sentencing?
A. I recall doing that at my office.
Q. Okay. Not in the courtroom?
A. Correct.
Q. Okay. And do you recall having any discussions with Mr. Galemmo about a potential appeal at that point?
A. I don't know that I would characterize it as a discussion, but I did very clearly remember making the statement or observing that given the term of the sentence imposed, that the effect of paragraph 9 was that the waiver of appeal was triggered.
Q. And was that -- was that in response to something Mr. Galemmo said? Or was that --
Did you just offer that up to him?
A. I don't remember. It's my -- it's my practice in situations like this that tend to be -- where the representation is public of some kind and there's a degree of media attention given to it, after a proceeding, get the client and his family back to my office, and my experience is it's a much more conducive place to have conversations like this. Also, as you can imagine, there tends to be a degree of

emotion involved after a sentencing proceeding, and typically I like to give a "Just the Facts, Ma'am" kind of overview for the client and let the client and his family attend to the emotional issues before dealing with any questions that -- legal questions that the client would have.
Q. And after that meeting with Mr. Galemmo and his family, did you have any other communication with Mr. Galemmo?
A. I don't recall any.
Q. He never -- he never called you on the phone and you never called him on the phone after that point?
A. I -- I don't -- I do not recall that, no.
Q. Okay. Now, I'm sure you've seen, as part of the pleadings in this case, that your partner, Angela Hayden, had sent certain e-mail communications back and forth to Mr. Galemmo with regard to, among other matters, potential appeal.
Have you read those?
A. I believe I -- I have. Some of them. I don't remember specific -- I can't say for sure that I have. I could --
Q. Do you recall whether you had conversations with Ms. Hayden regarding that topic at the time?
A. Oh, absolutely.
Q. Okay. And so is it fair to say that you either approved or adopted what she said in those -- in those e-mails?
A. I can't -- I don't know that I approved or adopted. I'm not sure what's in those e-mails, so I'm hesitant to do that.

But I can tell you I was in communication with Ms. Hayden about the general subject matter of the appellate rights.
Q. Would you like to review them very quickly to see if you recognize them?
A. I can.
Q. Okay.
A. If you could direct me.
Q. Sure. It would be --
I'm going to tab No. 13. And in terms of page numbers, it says Exhibit 4 on the bottom. It's probably about 15 pages in.
There's a -- the e-mail, the first e-mail I come to in question is dated Tuesday, September 2nd, 2014, at 2:34 P.M.
A. Yes.
Q. You see that?
A. I do.
Q. Okay. And so just take -- just take a second and see if you -- see if you recognize that or have any recollection based upon that e-mail that you would have had a conversation with Ms. Hayden with regards to that.
A. I'm sorry, Mr. Schad. Can you repeat your direction?
Q. Sure. I just want you to read it and see if you -- if it refreshes your recollection as to any communications you had with Ms. Hayden with regards to the subject matter of the e-mail.

A. Yes. One moment, please.

(Witness reading a document.)

A. I do -- I don't specifically remember this e-mail. It looks like I was copied on it. I could have read it. I don't specifically recall this e-mail, but I recall discussing the subject matter generally with Ms. Hayden at the time.

Q. It's clear based upon this e-mail that there were at least some discussions with regard to a potential appeal with Mr. Galemmo from your office?

A. Certainly.

Q. Okay. And you had indicated earlier, after that meeting with Mr. Galemmo on the day of sentencing, you had no further communication with Mr. Galemmo about any -- about any subject matter?

A. I indicated that I don't recall any.

Q. Okay.

A. I don't recall any.

Q. And you don't recall any.

MR. SCHAD: Okay. I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MS. GLATFELTER:

Q. Mr. Dusing, did you represent Glen Galemmo as a firm? Did your firm represent --

A. That's correct.

Q. -- Glen Galemmo?

So was it a team effort with you and Ms. Hayden?

A. Without question.

Q. When you met with --

What were the different ways in which you and Ms. Hayden would communicate with -- with Mr. Galemmo?

A. Over the entire course of history of representation?

Q. Yes. If you could generally talk about that.

A. We would talk face-to-face with Mr. Galemmo. We would talk over the phone with Mr. Galemmo sometimes on a conference call where we both participated. I talked on occasion with Mr. Galemmo on the phone by myself. I'm aware that Ms. Hayden did the same. And then we also communicated via e-mail, to my memory.

Q. And so you worked as a team in representing Mr. Galemmo?

A. Absolutely.

Q. Do you recall generally how many times you talked about pleading or the plea before Mr. Galemmo signed the plea agreement?

A. I don't remember a specific number of times, but obviously it was not just once. It was quite a few times.

Q. And was that over the phone, in-person?

A. Certainly in-person at least once. Probably -- I don't remember specifically off the top of my head, but, obviously, that is a very significant decision, a client needs to

understand, and it's -- Ms. Hayden and I, obviously, were focused on making sure that he was in a position to make a knowing and voluntary decision.
Q. And were there -- were there several drafts of the plea agreement that you went through with the Government?
A. I don't recall, but I presume that there must have been.
Q. And negotiation of the Statement of Facts?
A. Certainly. I do now recall that there were several iterations of that, I believe.
Q. Now, was Mr. Galemmo in custody between the time of the plea agreement and sentencing?
A. He was not.
Q. So you could communicate with him in any way?
A. Yes.
Q. Okay. And what about right after sentencing: Was he taken into custody at the end of sentencing?
A. No.
Q. Do you know when he reported?
A. I don't, off the top of my head.
Q. Was there -- is there an event that would help you remember?
A. I'm not sure. I -- I don't recall what his report date was.
Q. Was he deposed at the end of October? I'm sorry, September; the end of September.

A. He was. I will say that Ms. Hayden represented -- was present with him for that. I did not personally participate in that. I'm not sure that triggers an instant memory for me.
Q. Okay. So let's talk about that time frame between --
The sentencing was August 27th and 28th -- right? -- of 2014?
A. Uh-huh.
Q. And that deposition was September -- at the end of September 2014?
A. Yes.
Q. During that time he was not in custody?
A. (Nods head affirmatively.)
Q. Is that correct?
A. That's correct. I'm sorry.
Q. And you could communicate with him any way: You could meet with him in-person, you could e-mail, and you could call --
A. That's right.
Q. -- right?
Now, what happened in the courtroom after the sentence was announced?
A. Well, I don't recall any major dramatic events. I was focused on executing our sort of plea -- preplanned exit for the protection and convenience of the client and his family.
Q. And what was the -- what was the preplanned exit?

A. Well, generally our approach is that I hang back so that the attention is on me. And to the extent that there is media inquiry, and whatnot, I can address that with the prior instructions from the client. Meanwhile, other of my staff, generally led by Ms. Hayden, tend to -- making sure the immediate family members are not subject to undo harassment.
Q. And this was important -- right? -- because Glen Galemmo wasn't in custody; he was able to walk out of the courtroom into a fury of media and victims?
A. That's correct.
Q. Did Mr. Galemmo ask you right there in the courtroom to file an appeal?
A. I don't recall that.
Q. You don't recall him asking you that?
A. I don't recall that.
Q. Did he ask you in the office right afterward to file an appeal for him?
A. I don't believe he did.
Q. Did he say anything at the meeting in your office?
A. I don't recall. I believe he did, but I believe that the comments were more -- were not legal in nature, and the family was upset, the client was upset. That was understandable. I don't recall any legal questions and I didn't want to deal with legal questions then. In my experience, it's not a good time to do so.

Q. And in the time after sentencing, before he reported to B.O.P., did he ever ask you to file an appeal?
A. No.
Q. Did you ever refuse to file an appeal for him?
A. No.
Q. Did you ever tell him you weren't filing a notice of appeal because he owed you money?
A. No.
Q. In fact, did your firm work for free for his wife?
A. I believe we did, yes.
Q. And that was following his sentencing?
A. That's correct.
Q. If he had asked you to file an appeal, would you have filed a notice of appeal for him?
A. Sure.
Q. All right. I'd like you to take a look at Exhibit 10 in your exhibit book. If you can flip to the exhibit attached to the filing.
A. Okay. Yes, ma'am.
Q. Okay. Do you recognize this e-mail?
A. I do.
Q. Okay. Is that Angela Hayden the Angela Hayden we've been talking about?
A. It is.
Q. And she's part of the law firm where you work?

A. She's a partner in my law firm, yes.
Q. Okay. And she's sending an e-mail to Mr. Galemmo? I guess that is the name, Glen Allen?
A. Yes.
Q. Is that his middle name?
A. That is his name.
Q. It is dated September 15th; is that correct?
A. That's correct.
Q. Okay. And it says:

"Glen,

"As we discussed, you're aware that your appeal deadline is tomorrow. You are aware of our recommendation, but as I said, if you decide you want to appeal, we will file the notice of appeal for you and then proceed to withdraw from the case."

"Based on our conversation, I understand that you do not want to appeal. But if you change your mind, please let us know before the end of the day tomorrow. Thanks."

Okay. Why do you send an e-mail like that to a client?

MR. SCHAD: Your Honor, I'm going to object. He did not send the e-mail to the client.

MS. GLATFELTER: I can rephase.

Q. Is it the practice of your firm to send an e-mail like this to a client after their sentencing?
A. It is -- I would say it is a practice to be very cognizant

that they are aware of their appellate rights, and so this e-mail is consistent with that general practice.
Q. And you sent -- you record this for your records; right? You want to have something in your records to -- if an issue like this comes up in the future?
A. Certainly. We certainly retain it in our records, yes.
Q. Now, after this e-mail was sent September 15th, that's about two weeks before that deposition, did Mr. Galemmo ever call you and say, "Hey, I got this e-mail from Angela Hayden"?
A. I do not recall any such phone call, no.
Q. Did he send you an e-mail and say, "I got this e-mail"? Or "I forwarded you this e-mail"? Or "I got this from Angela. What's going on? I thought we had an understanding"?
A. No. The e-mails produced in connection with this proceeding is the sum total of the e-mail correspondence at issue.
Q. Did he e-mail you at all after this or call you about an appeal?
A. Based on my review of the e-mail correspondence that we directed in response to the Government's request, no, and I have no such memory of an e-mail.
Q. This was it? I mean, this was it in terms you never heard from him about an appeal --
MR. SCHAD: Your Honor, asked and answered twice now.
THE COURT: Okay. Sustained.

Q. Mr. Dusing, have you, in the course of your career, have you filed an appeal before?
A. I have.
Q. And is it a simple process to file a notice of appeal?
A. On the spectrum, I would say it is not the most challenging.
Q. All right. And it does not obligate you to stay on a case for the appeal; right?
A. That's correct.
Q. I'd like you to -- one final thing. I would like you to turn in your binder to -- I think it's Exhibit 21.
A. Yes, ma'am.
Q. And if you look at page 3035 -- I'm going by the docket numbers at the top.
A. I'm sorry. 3035?
Q. Yes.
A. Yes, ma'am.
Q. Okay. And this is from the sentencing hearing after the -- after Judge Weber announced sentence in the case?
A. It appears to be a transcript of that proceeding, yes, ma'am.
Q. All right. And at the top of that page, the Court is the one speaking; is that right?
A. Just -- I believe it's identified that you were speaking and then the Court comes in, if that's what you mean.

Q. Right. And if we look down at the bottom of that page starting at line 14 --
A. Yes, ma'am.
Q. -- right? -- and the Court advised Mr. Galemmo during the sentencing that if he couldn't retain a lawyer, he could have one appointed for appeal?
A. It does so reflect.
Q. And it reflects that the Court advised him of when his notice of appeal had to be filed; correct?
A. Yes, ma'am.
Q. And the Court asked him --
If we go to the next page, towards the bottom, the Court says to Mr. Galemmo: "Do you have any requests or questions at this time, Mr. Galemmo?" And he responds, "No, I do not?"
A. I see that, yes.
Q. He didn't ask the Court to file an appeal for him either?
A. The transcript does not reflect that, no.
MS. GLATFELTER: One moment, Your Honor.
(Government Counsel confer privately.)
MS. GLATFELTER: No further questions for the Government.

REDIRECT EXAMINATION

BY MR. SCHAD:
Q. Mr. Dusing, if we can just stay on that page and -- page 3036, and if you can look at the top of the page, and it's the

second time that the name "Mr. Dusing" comes up. This is 3036, the page you were just on.
A. Is that line 4, Mr. Schad?
Q. Yes. Starting at line 4. Can you read that into the record, please?
A. Yes.
"MR. DUSING: Your Honor, we recognize our right to appeal, and you have my representation that I will address the appellate issue."
Q. Okay. And you testified on direct that you don't have any direct recollection of discussing the notice of appeal with Mr. Galemmo after that point; is that correct?
A. I'm sorry. Can you repeat the question?
Q. Yeah. You testified on direct on this matter that you don't have any recollection of having any discussion with Mr. Galemmo directly with regards to an appeal after this date?
A. That's -- I recall testifying after this we went back to my office. I instructed the client -- or I advised the client generally, very briefly, that in light of the sentence imposed, the appellate waiver was triggered; obviously invited further conversations and knew that there would be some, and that's what happened that day.
Q. Okay. And you had also indicated I think on cross that it was a very emotional time and no real legal matters were

discussed at that -- at that meeting?
A. Well, I would -- I don't know that I chose those words. If I did, let me amend them.
There was no substantive conversation. But in light of the sentence imposed, it is prudent to advise the client that the appellate waiver was triggered. That was done.
And we advised the client that any future -- if they had any questions, certainly we would be there to answer those.
Q. And you indicated on cross that this was a team effort. But you were primary counsel for -- for purposes of this criminal representation; were you not?
A. I don't -- I say that because I think -- I don't know that I would be --
I was listed as primary counsel, or my name was first, but Ms. Hayden and I work as a team, and so I'm loath to call myself a primary.
Q. Would -- would there have been a notice of appeal filed without you knowing about it?
A. I sure hope not.
Q. Okay. Fair enough.
MR. SCHAD: I've no further questions, Your Honor. We would ask that the witness be excused.
THE COURT: Okay. Thank you.
THE WITNESS: Thank you, Your Honor. Thank you, Mr. Schad. May I be --

THE COURT: Yes, you can. Just leave that there, if you like.

THE WITNESS: Very good. Thank you.

(Witness excused.)

MR. SCHAD: Your Honor, we'd like to call Glen Galemmo as our next witness.

THE CLERK: Mr. Galemmo, please raise your right hand.

(Witness duly sworn by the Clerk.)

MR. SCHAD: Your Honor, I don't want to disrespect the Court, but I think I need to move my focus this way to be able to communicate with Mr. Galemmo.

THE COURT: That's fine.

MR. SCHAD: Thank you.

GLEN GALEMMO

defendant-petitioner herein, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHAD:

Q. Mr. Galemmo, can you -- can you hear me okay?
A. Yes, I can. Can you hear me?
Q. Yes, but please continue to be near that monitor, or whatever you're near, and please continue to speak up.
Can you please provide your full name for the Court, please?

A. Glen Allen Galemmo.
Q. And what is your -- what is your connection with this case?
A. My connection with the case is I'm the defendant.
Q. All right. And you filed a petition pursuant to 28 U.S.C. Section 2255 in this matter?
A. Correct.
Q. All right. And you filed that *pro se*?
A. Correct.
Q. All right. Mr. Galemmo, let's get right to the matter at hand. Did you want to appeal after your sentencing?
A. Absolutely. And, I would like to add, I had a 20-minute conversation with Mr. Dusing --
Q. Well, we will get to that --
A. -- where --
Q. We will get to that in a moment, Glen.
Let me just ask you who did you tell that you wanted to appeal? Which persons?
A. Told Mr. Dusing.
Q. Did you tell anyone else?
A. Not that I recall.
Q. Okay. So I want to talk to you a little bit about the relationship with Mr. Dusing and Ms. Hayden.
Are you familiar with Angela Hayden?
A. Absolutely.

Q. How are you familiar with her?
A. She was Ben's assistant.
Q. Did she represent you in the criminal matter, to your understanding?
A. She -- my understanding, Ben Dusing was the lead, my lead counsel. He always spoke in the courtroom. Angela Hayden never spoke in the courtroom for me --
Q. Okay.
A. -- so that -- that Ben Dusing was the lead attorney in my case.
Q. When you had substantive conversations about either your plea agreement or your sentencing, were those always with Mr. Dusing?
A. I don't recall, except on possibly one occasion that me and Angela even addressed the fact that there was a -- I wanted to do a plea agreement. This was directly with Ben.
Q. So let's go then to your initial conversations with Ben Dusing with regards to the plea agreement in this matter.
And you have a copy of the exhibits that we have here in front of you; is that correct?
A. Yes, I do.
Q. Okay. And so Exhibit No. 1, Joint Exhibit No. 1 is -- just go ahead and take a look at that and see if you recognize that. And turn to the last page and look at the signature lines and then let the Court know whether or not you -- what

this document is.
A. It appears to be a plea agreement and which I signed.
Q. Okay. And is that in fact the plea agreement which you signed in the case?
A. As far as I know, yes.
Q. Okay. I'd like to turn your attention to -- it's page -- at the top it says page 5 of 16, PAGEID #16. If you could get that in front of you, Mr. Galemmo.
And I would like you to, once you have that in front of you, just read to yourself what's labeled paragraph 9. It says Waiver of Appeal. Just read that to yourself for a moment and let me know when you're done.
(Defendant reading a document.)
A. I have read it.
Q. Okay. And did you have conversations with Ben Dusing prior to signing the plea agreement about that particular provision?
A. I -- what I recall from the conversations we had was, first and foremost, I was told that I needed to sign --
This is exactly what Ben Dusing told me.
-- I needed to sign this plea agreement. And he also mentioned the fact that the Government was going to get involved if I didn't sign the plea agreement. And I do not recall him going over this paragraph where it states that 188 months was the -- was the max I could get or the

possibility where it states 97 months -- the fact if it goes below 97 months, the Government could actually appeal the case, that was not brought to my attention.
Q. Did you -- did you have any conversations with Ben Dusing with regards to your right to appeal prior to signing the plea agreement?
A. No.
Q. Okay. You do recall, though, getting in front of -- I believe it was Judge Weber at the time -- and pleading guilty?
A. Absolutely.
Q. Okay. And you do recall, I'm sure, that -- that Judge Weber went over this provision of the plea agreement with you at the time of that -- of that hearing?
A. Correct.
Q. Okay. So after the -- after the plea hearing, did you have -- did you question Mr. Dusing about that particular portion of the -- of the plea agreement?
A. Can we step back? Can I make another comment about your first question?
Q. Sure.
A. This plea agreement states in here the loss calculation of 7- to $20 million, and that was my focus as the defendant, or individual signing this plea agreement. That was my number one concern, because -- and I also want the Court to know that's the reason why I signed it. Okay? Now I'd like to

move --

Go ahead with your next question.

Q. Okay. Let's go to the conversations that you would have had with Ben Dusing immediately after entering the plea in front of Judge Weber.

Did you have any discussions with him at that time in regards to an appeal or you were waiving your right to appeal?

A. I'd like to step back and explain the situation --

Q. Well, answer --

Glen, if you could answer the question first and then -- then we can work from there.

A. Okay. Please repeat the question.

Q. Sure. After -- after the plea hearing, after you entered into the plea agreement with Judge Weber and the plea waiver was discussed at that hearing, did you immediately thereafter have any conversations with Ben Dusing with regards to this plea waiver -- appeal waiver?

A. I looked at Mr. Dusing as soon as Judge Weber got off the bench and I told him we're going to fight. This was my exact words: "I want to fight the restitution numbers," and the fact the loss calculation was never done. And in so many words, I told Mr. Dusing I wanted to appeal it. He told me --

Q. Okay. So -- let me -- Glen, I may have confused you. I'm talking about at the time of the plea hearing, not at the sentencing.

A. No. No.
Q. Okay. Fair enough. Fair enough.
So between the time of the plea hearing and the time of sentencing, you obviously have many conversations with Mr. Dusing with regards to the PSR and the improper loss amounts and the restitution numbers and other enhancements of the guidelines; correct?
A. Correct.
Q. And he filed a lot of objections to the PSR based upon those conversations?
A. Yes.
Q. Okay. And during those conversations that you had with him, did the issue of a potential appeal come up at that time?
A. Not that I recall.
Q. Okay. So when is the next time that you have a discussion with Ben Dusing with regards to the potential of an appeal?
A. The first time the word "appeal" even came up was as soon as we left the judge's chamber on the second day of sentencing.
He -- while we were in chambers, I felt I was threatened when he told me that if we make the Government provide burden of proof on the restitution numbers, his exact words to me was it would be very bad for me.
Q. And who's -- who's "he" at that point when you say "he"?
A. Judge Weber.

Q. Okay.
A. Those -- those -- those were the words that Judge Weber stated to me.
And I had -- after that fact, Mr. Dusing argued, I would say very strongly, the fact that a restitution number is not a loss number, and in so many words told Judge Weber we didn't care what the restitution number was, but it's not a loss calculation.
I think that the main point here is that as soon as we left the room, we huddled up and we had to make a decision if we were going to make the Government provide the burden of proof. And Mr. Dusing's advice to me was it would be smart not to, and then my -- first thing out of my mouth was, "What are we going to do if he makes the restitution a loss number?"
And it wasn't me who even said it. I don't recall which -- it was either Angela or Ben -- they told me I had options: We can appeal. And, unfortunately, later that afternoon, the honorable judge made the restitution a loss -- a loss number. So that's the first time that the -- that's the first time "appeal" or the fact that something had happened that we -- I would understand we had recourse, we could do something about it.
Q. And you don't recall whether it was Mr. Dusing or Ms. Hayden that said it?
A. I do not.

Q. Did you have any discussions with Mr. Dusing immediately after the sentencing with regards to an appeal?
A. Yes, there were several discussions.
Q. Well, tell me about the first one.
A. The first one, I was very emotional as soon as the judge walked off the bench, because in my mind I couldn't understand how the restitution number becomes a loss calculation. And I looked right at Mr. Dusing and I said, "We're going to either appeal this -- we're going to fight the restitution numbers," and he looked at me and he said, "Calm down. Relax." And that was it. He told me to calm down and relax and to basically get myself upstairs where we were all meeting. I believe the room we met in is where the jury meets above Judge Weber's chambers.
Q. You met with Mr. Dusing in the courthouse after sentencing?
A. Absolutely.
Q. Okay. And who was in that -- who was in that room?
A. My -- my whole family came in. Angela Hayden was sitting down in a chair. And once we got upstairs, I looked at Mr. Dusing and I asked him this question directly to him --
My daughter was standing right next to him, and I'm not sure if all my family was in the room.
-- I asked him, "Ben, did you tell the prosecutor about all the 5K1 information?" And he was brutally honest with me;

he looked down at the floor and he said no, he only brought up one or two issues.
Q. Did you have any other discussions with regards to an appeal at that point?
A. Not at that point, no.
Q. Okay. So you had heard on direct examination Mr. Dusing say that he had a meeting with you after sentencing on the day of sentencing at his office with your family as well. Do you recall that meeting?
A. Absolutely.
Q. Okay. And that was in addition to this meeting immediately after the sentencing?
A. Correct.
Q. Okay. And at that meeting back at Ben Dusing's office, did you have any discussions with regards to an appeal at that point?
A. No, we were just basically -- no.
Q. Do you recall Mr. Dusing informing you of your waiver of appellate rights at that meeting?
A. No.
Q. Okay. When is the next time you spoke with Mr. Dusing after that particular meeting?
A. I called Mr. Dusing on his cellphone three or four days after that point, I believe -- maybe only a couple; I don't recall the day -- and told Mr. Dusing -- we had about a

20-minute conversation. I gave -- I laid out all the reasons why I wanted to appeal. And the primary reason was I was sentenced using a loss table, when a loss calculation's never been done, and the fact of the matter is the judge made the restitution number the loss number.

And I went even as so far to question Mr. Dusing the fact -- he didn't like this -- I questioned the fact that I signed a plea agreement without us having the *Brady* material from the Government, and he went ballistic on that context.

But he did advise me at that time that there was a --

This is what he told me: There was a risk that the judge would give me a higher sentence than 188 months. And these are my exact words to Mr. Dusing: "I do not care"; I wanted him to appeal.

Q. Okay. And did he tell you at that time that he was going to file the notice of appeal?

A. No, he did not. This is what he told me: He told me, "Relax," and that we would reconvene. He wanted me to take a couple days and calm down and think about what he had told me. And he did lay out all the risks; there's no doubt about that. But I, at that point, I just received an 188-month sentence without a loss calculation being done, but on the sentence based off the loss table, and I didn't understand it.

Q. So after that point, after he said that "Wait a couple of days," did you have another meeting or phone conversation with

Mr. Dusing?

A. No, I did not. And --

Q. Did you try to call him?

A. I sent an e-mail to him; the same one I sent to Angela Hayden asking what can be done to reduce the sentence.

Q. And I'm going to actually then --

If you can take a look at tab -- I believe it's 13. Let me -- let me know when you have tab 13 in front of you.

A. I have it.

Q. Okay. And it looks like it's about eight or nine pages in. There's a string of e-mails here. The one I'm looking at says Exhibit 4 at the bottom. The e-mail's from you or at least glenalan11. It's dated Monday, September 1st, 2014, at 8:54 P.M.

Do you see that one?

A. I have it right here.

Q. Okay. And let me first ask you did you send this e-mail to Ben Dusing?

A. Correct. Yes, I did send this e-mail to Ben Dusing.

Q. Okay. And then if you look at the next page, it seems that there is a response from Angela Hayden that was the next afternoon. Do you see that?

A. Correct.

Q. Okay. And did you receive that e-mail from Angela Hayden?

A. Yes, I did.

Q. Okay. And let me -- let me ask you when you sent this letter or e-mail to Ben Dusing on September 1st, 2014, did you ever hear from Ben Dusing again?
A. No.
Q. Okay. Is the -- is today the next time you communicated with him in any fashion?
A. Correct. Correct.
Q. Okay. Now, I want you to take a moment to -- and you're probably already familiar with this document, but go to Angela's response to you dated September 2nd, 2014.
Are you familiar with that response?
A. Absolutely.
Q. Okay. And tell the Court what it is that you understood with regards to your appellate rights based upon that e-mail.
A. Well, first off, she states there is nothing that can be done to reduce the 188-month sentence. And I was shocked to get the e-mail, first of all, and I didn't realize it at the time when I got the e-mail, I do realize it now, but that's just basically -- just advising me of my rights. She's telling me there's nothing -- there's nothing we can do --
Q. Okay.
A. -- and she put it in writing.
Q. And did she in that e-mail tell you to go seek counsel, another attorney, at that point?
A. I --

Q. If you look at the bottom of the page.
A. Yes. It says, "All of that said," if I feel "like you want to explore your options, you're welcome to discuss it with counsel."
Q. Okay. Did you -- do you recall at all your reaction to reading that?
A. My reaction to reading that was basically I was being abandoned. He told me to -- to get lost. That was my reaction.
Q. All right. I'd like to take you to the next page which is going to say at the top or near the top right-hand side Tuesday, September 2nd, 2014, at 3:32 P.M., and I believe at the bottom it says Exhibit 5. This is dated the same day.
Did you receive this e-mail from Angela Hayden as well?
A. Yes, I did.
Q. Okay. And in that e-mail she tells you that the deadline for appeal is September the 16th. Do you recall that?
A. Yes.
Q. And does she give you any other advice with regards to finding another attorney?
A. No.
Q. Can you read the last sentence of that?
A. It states, "If you wish to discuss the matter with another attorney, please do so."
Q. And do you recall what your reaction was upon receiving

the e-mail?
A. My reaction is -- is simple: They're telling me to go find another attorney to do what I want to get done.
Q. Okay. Did you have the funds to pay another attorney at that point?
A. I -- absolutely not. I didn't have any money and I was an absolute emotional mess and I didn't have the knowledge at that particular time to even know where to go.
Q. Okay. Next -- keeping in the same document, I'd like for you to turn a couple pages ahead to -- this would be two pages ahead now. This is -- at the bottom it's labeled Exhibit No. 7 and it's dated Friday, September 5th, 2014, at 3:21 P.M.
A. Correct.
Q. Do you recall receiving that e-mail from a Debbie Ionna?
A. Yes.
Q. And what did that e-mail tell you?
A. Gave me an invoice telling me that I owe $43,727.00 --
Q. Okay.
A. -- the funds are past -- they're past due and there's no funds remaining in the trust account.
Q. Okay. And did that have any -- did you evaluate that in light of pursuing an appeal in this matter?
A. Well, my first concern at that point, and I believe an e-mail comes back, I asked Angela if they were dropping my wife. So she already told me that basically, in my opinion,

Kick rocks; go find another attorney. She put that in writing two times at this point. So my next concern was about my wife.

Q. And during this time are you trying to reach out to Ben Dusing directly at all?

A. I cannot honestly say that I tried to call him numerous times. I believe I left -- possibly left one message or tried on his cellphone. But I did point -- but at this point in the game, Angela had already told me there was nothing that could be done -- okay? -- which was misadvice, and she tells me to go find another attorney and, you know, I'm sitting here going, "Now what?"

Q. So, let me then turn your attention to the very next page, which is another e-mail from Angela Hayden dated September 15th, 2014, at 2:59 P.M.

Do you have that one in front of you?

A. September 15th e-mail?

Q. Yes. It says Exhibit 8 at the bottom.

A. Yes.

Q. You have that? And did you receive that e-mail from Angela Hayden?

A. Correct.

Q. Okay. Now, in that e-mail she tells you that your appeal deadline is tomorrow, which would be the next day after this e-mail; correct?

A. Correct.
Q. Okay. She says that in -- "Based upon our conversation, I understand you do not want to appeal."
Did you have a phone conversation or an in-person conversation with Angela Hayden around that time?
A. No.
Q. What is the conversation that she's referring to?
A. You'd have to ask her.
Q. Okay. Did you do anything in response to this -- receiving this particular e-mail?
A. No, I did not.
Q. At that time you wanted to appeal; correct?
A. Yes.
Q. Why did you not then contact Ben Dusing or Angela Hayden when you received this e-mail and tell them, "No, you're wrong, I want to appeal"?
A. I had a 20-minute conversation with Ben; it was very clear: He knew what I wanted to have done. Okay? I couldn't have made it any clearer. And, again, he expressed to me his concerns of what could possibly happen to me. And my exact words again to Mr. Dusing was, "I do not care."
And I think a very important point at this time is -- I want to make -- is that me not responding to the e-mail I feel is normal protocol in this relationship, because I'd like the Court to turn to Section [verbatim] 17 -- Section 17,

Exhibit 6, and I'd like to read it to -- to show my point to the Court why I didn't respond to that e-mail, and I'm going to start reading it now.

Q. Glen -- Glen -- Glen, tell me where you're at.

A. I'm in Section 17, Exhibit 6.

Q. Does it say --

Is it an e-mail dated Tuesday, April 8, 2014?

A. Correct.

Q. Okay.

A. "I am concerned and having issues with us not getting the actual number that was invested in Queen City investments, the actual loss on real investments, is total amount of money that has been traded, total cost of operations and salaries, total amount sent out to investors. I've been saying from the beginning these facts are not going to hurt me, and this will also show that we were working hard to actually investing money."

Next point. I asked Ben Dusing on several occasions to get an accountant to do the numbers. I also asked -- and there's an e-mail that does exist -- I asked for Mr. Dusing to bring five -- seven 5K items to be brought to the -- to the prosecutor.

I also told him on August 10, 2014, that -- these are my exact words -- "We're missing 40- to $50 million in loans; that the number we gave to the Government is incorrect."

And my point in all this is, I've asked -- and I can send the Court probably 20- to 25 e-mails where I simply asked Mr. Dusing to do something and it was never done. And my point here is all these things I asked him to do would have helped me at sentencing. None of it was done, and none of it was even done before sentencing.

Q. Is there any --

A. So --

Q. -- question that you unequivocally told Mr. Dusing that you wanted to file a notice of appeal?

A. I had a 20-minute conversation with him. I'm still waiting for his response or callback from him, and I'm still waiting for the response from Mr. Dusing from the e-mail that Angela, I guess, responded for him. But, unfortunately, she misadvised me on that e-mail. She gave me mis-advice. She put it in writing.

MR. SCHAD: Your Honor, I have no further questions for this witness.

THE COURT: Okay.

MS. GLATFELTER: May I inquire, Your Honor?

THE COURT: You may.

MS. GLATFELTER: And I apologize. I'll do the same thing in facing the witness.

THE COURT: Sure.

CROSS-EXAMINATION

BY MS. GLATFELTER:
Q. Mr. Galemmo, you were represented by Mr. Dusing and Ms. Hayden; is that correct?
A. Correct.
Q. And you're alleging in your 2255 and here today that they provided ineffective assistance of counsel to you?
A. Absolutely.
Q. And just -- just to be clear, you're waiving the privilege to the extent necessary to litigate your claims?
A. Yes.
Q. You claim you didn't know an appeal wasn't filed on your behalf; is that right?
A. Correct.
Q. When is the first time you found out an appeal wasn't filed?
A. When I was given -- I was given that e-mail. I was given basically eight hours to get something together.
Q. Are you talking about the September 15th e-mail that Angela sent you? Let's look at Exhibit 10. Let's look at Exhibit 10 to be clear here. Exhibit 10, the second page.
A. No, I was -- let me --
Ask me the question one more time so I'm clear, so I can hear you. Ask me the question, please.
Q. When's the first time you found out that an appeal was not filed?

A. When Angela sent me an e-mail stating that -- stating that I needed -- if I wanted an appeal done, that I would have to -- I would have to go to another attorney.
Q. And is that the e-mail in Exhibit 10, the second page?
A. I believe so.
Q. And that's September 15th, 2014?
A. If that's the date on there, yes.
Q. Now, you pled guilty in 2014; right?
A. Correct.
Q. Okay. And you already identified your plea agreement; it's in that binder as Exhibit 1?
A. Correct.
Q. Okay. And I want you to look at Exhibit 1 for me. I'm going to use the page numbers that are at the top of the document where it says PAGEID. Do you see PAGEID #20?
A. I am getting -- I do not at this point. 17? 16, 17. No, I do not. But --
Q. All right. You signed the plea agreement; right?
A. Correct.
Q. And above your signature it says, "I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, I voluntarily agree to it, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney." Signed, "Glen Galemmo, December 15th, 2013."

So did you sign the plea agreement?
A. Correct.
Q. Okay. And then you also had to sign the Statement of Facts, which is PAGEID #26, also dated the same date?
A. Correct.
Q. And it says above your signature, "I've read the Statement of Facts and have carefully reviewed it with my attorney. I acknowledge it is true and correct." And that's your signature down there?
A. Correct.
Q. Now, besides signing the plea agreement, you had your plea hearing in front of Judge Weber as you testified on direct; is that right?
A. Correct.
Q. And you were put under oath at that time; is that right?
A. Correct.
Q. And you're asked some questions by Judge Weber; correct?
A. Correct.
Q. And you went over the plea agreement at that time in court under oath?
A. Correct.
Q. All right. And you testified that these were your signatures; is that right?
A. Correct.
Q. And you testified that the information in the plea

agreement was true and correct?
A. Correct.
Q. Now, you were sentenced later that year in August by Judge Weber; is that right?
A. Correct.
Q. And we've been talking about the sentence but we haven't mentioned it. It was 188 months; is that right?
A. Correct.
Q. And that was on Thursday, August 28th of 2014?
A. Correct.
Q. When is the date that you self-reported to B.O.P.?
A. I believe it was October 7th, 2014, at 2:30 P.M.
Q. Okay. So from August 28th to October 2014, you were not in custody; is that right?
A. Correct.
Q. All right.
A. Correct.
Q. Now I want to go back to sentencing for a few minutes.
The hearing actually lasted a couple days; is that right?
A. Correct.
Q. Mr. Dusing was present with you at sentencing; is that right?
A. Yes.
Q. And Angela Hayden was present with you at sentencing; is that correct?

A. Yes.
Q. Both of these attorneys sat with you at the defense table?
A. Correct.
Q. And both of them were there when the Court announced your sentence?
A. Correct.
Q. Now, after the Court told you your sentence, the Court explained to you that you could appeal your sentence; is that right?
A. Yes.
Q. And the Court explained that the notice of appeal had to be filed within 14 days of the judgment; right?
A. Correct, but I would like -- correct.
Q. And the Court told you that if you could not afford an attorney for an appeal, the Court could appoint one for you; right?
A. If that's what they said, yes.
Q. Well, let's be clear. Let's look at it. Let's go to Exhibit 21. Do you have that in front of you?
A. Yes, I do.
Q. All right. I'd like you to look at page 3035. That's the number at top, the top right-hand corner.
A. Following you.
Q. It says, I'm quoting here:
"If you are indigent and cannot retain a lawyer, you

may apply and one will be appointed to represent you on your appeal. You are further advised that in accordance with the provisions of Rule 4(b) of the Rules of Appellate Procedure, you must file your notice of appeal with the Clerk of the United States District Court within 14 days of the filing of the judgment."

Right?

A. Correct.

Q. All right. And then if we flip over to the next page, at line 18, the Court asked you:

"Do you have any requests or questions at this time, Mr. Galemmo?"

Is that right?

A. That's correct.

Q. And you say, "No, I do not"?

A. Correct.

Q. And right before he asked you that question, he told you that if you want to, he would prepare and file a notice of appeal on your behalf; right?

A. Correct.

Q. And so when he's asking, "Do you have any requests or questions at this time?" that's what he's asking?

MR. SCHAD: Objection, Your Honor. Calls for a legal conclusion.

THE COURT: Sustained.

Q. And your response to the question the judge asked was, "No, I do not"?
A. Because I did exactly what my attorneys told me to.
Q. The answer to the judge's question was, "No, I do not"?
A. Correct.
Q. Now, following sentencing before you reported to B.O.P., you communicated with your attorneys. We've talked a little bit about that today already. And you were not in custody at this point; correct?
A. Correct.
Q. Right after sentencing, the day of sentencing, you went to their office; is that right?
A. Correct.
Q. In the time period between sentencing and October 7th, you talked on the phone to your attorneys?
A. I had a 20-minute conversation two days later --
Two or three days later; the phone records will confirm this.
-- with Mr. Dusing where I made it very clear I wanted to appeal.
Q. So you did talk on the phone to your attorneys?
A. Absolutely.
Q. And you --
A. Absolutely.
Q. And you exchanged e-mails with them; correct?

A. I believe I only exchanged e-mails with one of them; that would be Angela Hayden. I'm still waiting for Mr. Dusing to respond to my e-mail.
Q. I'd like you to look at Exhibit 13. Do you have that in front of you? I'll wait till you're there.
A. What does it looks like? Or can you tell me the page?
Q. It's your response to the Government -- or to the Court's question, and it's Docket No. 145 at the top and it's dated May 9th. That's the file stamp on it, May 9th.
A. I have 145 right here.
Q. All right. I'm going to ask you to look at the exhibit, so if you're pulling out the pages, page No. 2625. We're going to look at some of these e-mails.
A. Okay. I have the e-mail right here.
Q. Okay.
A. I have them all right here.
Q. Let's start with the September 1st e-mail. That's you, glenalan11?
A. Yes.
Q. And that's your e-mail that you sent to Ben and Angela on September 1st, 2014 --
A. Okay.
Q. -- is that right? Is that your e-mail?
A. Correct.
Q. And then the next day, September 2nd, you get a response

from Ms. Hayden. That's her e-mail address that you know of; correct?
A. Correct.
Q. And she is cc'ing Mr. Dusing on the e-mail; correct?
A. Correct. Correct.
Q. And the e-mail is to you?
A. Uh-huh.
Q. Okay.
A. Correct.
Q. Now, you had additional correspondence the next day, actually. Ms. Hayden e-mailed you. If you flip the page over, Ms. Hayden e-mails you again to you and she's cc'ing Mr. Dusing and she attaches the final judgment.
A. Correct.
Q. And if you look at the next e-mail, the next page, September 3rd, there's another e-mail from Ms. Hayden to you and she says:

"Someone from the FEC called from a former investor of yours. Do you know who Janet Combs is?"

Right?
A. Right.
Q. And about an hour later, a little over an hour later, you write her back; right? You have regular correspondence --
A. Correct.
Q. -- with Ms. Hayden at this time?

A. Right.
Q. Now, that Exhibit No. 10 that we were looking at, I think it's also in this packet. If you flip to 2632, do you see that?
A. No, I do not.
Q. All right. It's the September 15th e-mail. It's also in Exhibit 10.
A. Okay. I have it.
Q. All right.
A. I have it right here.
Q. All right. And you said this is the e-mail that you received; correct?
A. Correct.
Q. And you received it before you went into B.O.P. custody on October 7th?
A. Correct.
Q. And you didn't respond to this e-mail?
A. Correct. And I explained to you early why. It was a normal activity for me to ask my attorneys to do something and them not do it. And I'd be more than willing to give the Court 40 or 30 examples of this throughout their -- their representation of me.
Q. I recall that response, Mr. Galemmo.
I'm asking you, you didn't call Ms. Hayden after you received this e-mail; is that right?

A. No. She already told me to find another attorney.
Q. Well, let's go -- let's go back to this e-mail. This e-mail says:
"Based on our conversation, I understand that you do not want to appeal. But, if you change your mind, please let us know before the end of the day tomorrow."
Right? That's the end of it.
A. Uh-huh.
Q. And above it says if you want --
"If you decide you want to appeal, we will file the notice for you and proceed to withdraw from the case."
It doesn't say, "Get lost." It says they'll file the notice of appeal for you.
A. I don't -- I don't take it as that.
Q. Well --
A. I take it as him -- I mean, that's your opinion. My opinion of it is they said they'd file an appeal, "Go find another attorney." I had no money. And the next e-mail I sent to Angela Dusing [verbatim], my biggest concern, like I stated earlier, was the representation of my wife.
Q. All right. But you, no doubt, received this e-mail and didn't respond to it; right?
A. Correct. And -- correct, and I explained to you why I didn't respond to it: 'Cause it was a normal occurrence for them not to do what I asked them to do.

MS. GLATFELTER: Just one moment, Your Honor.

(Government Counsel confer privately.)

Q. And that was the -- and that is the date you said you learned that no appeal was filed; correct?

A. Correct. But earlier they made it very clear to me that Angela Dusing, whatever date that e-mail is, told me straight up that there was nothing that could be done to do anything about the 188-month sentence. And I don't know what date that was. So I believe that was --

Q. After --

A. Go ahead.

Q. After you received this e-mail from Ms. Hayden, you actually had a deposition in the civil case, the federal civil case; is that right?

A. Correct.

Q. And the first day of that was September 30th, 2014, and the second day was October 1st; is that right?

A. Correct.

Q. That was in Cincinnati?

A. Yes.

Q. And you were not in custody at the time of that deposition; correct?

A. Correct.

Q. And it occurred at the office of one of the plaintiffs' lawyers?

A. Correct.
Q. Who represented you at the deposition?
A. Angela Hayden came with me.
Q. Mr. Dusing was not there?
A. Nope.
Q. Ms. Hayden was there both days; is that right?
A. I believe it was --
It was not two days. I believe it was a three- or four-hour, fairly quick thing, where basically -- it was a three- or four-hour where they asked me some questions. It wasn't a two-day event.
Q. Well, if the transcript is for two days, you wouldn't disagree with that -- right? -- if your recollection differs on that? Regardless, you went to the deposition; right?
A. Yes.
Q. And this was the one that occurred right before you reported to B.O.P.?
A. Correct.
Q. And during that deposition, before and after, you did not discuss any appeal with Ms. Hayden; did you?
A. No, I did not.
Q. You didn't ask her about the e-mail she sent you?
A. No, I did not.
Q. And despite whatever you thought the e-mail was, she was there at the deposition representing you?

A. Correct. She had already told me they were not going to do it, there was nothing that can be done.
Q. But she was there -- you said you felt that the e-mail was "Get lost," but there she is, two weeks later, representing you at the deposition; right?
A. Correct.
Q. And she's doing that despite you having an outstanding balance of $49,000.00 earlier in September; right?
A. I would disagree with that statement a hundred percent. She was doing it because she had an opportunity to receive 3- or $400,000.00 by representing my wife.
Q. She was at the deposition with you; is that correct?
A. Correct.
Q. And earlier that day you received an invoice for $49,000.00; is that right?
A. Correct.
Q. Now, the deposition --
At the end of the deposition, isn't it true that you and Ms. Hayden signed a termination letter terminating the representation of Ms. Hayden and Mr. Dusing of you?
A. I do not recall that. The first time I saw the letter from them was dated November 17th where they sent me a letter stating they were no longer my counsel.
Q. All right. Throughout this case, Mr. Dusing and Ms. Hayden kept you informed of the proceedings; they attached

the filings, e-mails; is that right? The court filings to e-mails?
A. Correct.
Q. All right. And they sent you copies of e-mails of -- that I sent. I saw you have received copies of e-mail correspondence I had with Ms. Hayden and Mr. Dusing; is that right?
A. That is correct. And the one e-mail they sent me that you had correspondence with shows Ben Dusing stating he didn't want to know what the actual facts were.
Q. They sent you a Government's sentencing memo; is that right?
A. I believe so.
Q. And you saw the response? They sent it to you?
A. Yeah. I don't recall it. I don't have it memorized.
Q. All right. And you received the judgment from Ms. Hayden?
A. Correct.
Q. They never sent you a copy of a Notice of Appeal; did they?
A. No, they didn't.
Q. They never sent you a copy of an appellate brief; did they?
A. No.
Q. And you never asked for one; did you?
A. I asked Ben Dusing to do an appeal in a 20-minute phone

conversation. And based on the events that happened in judge's chambers where you were present, the plaintiff, in my mind was if the judge made the restitution number the loss calculation, there's no doubt in my mind we were going to fight that.
Q. And you filed this 2255 motion yourself; correct?
A. Correct.
Q. You filed it what's called *pro se*?
A. That's correct.
Q. You never tried to file an appeal *pro se*; is that right?
A. I, at that particular time, I had zero knowledge of the law. I may still have zero knowledge of the law; I'm not an attorney. I'm doing what I can and the best I can do under the circumstances.
Q. Understood.
You filed this -- or you sent the 2255 in November of 2015? You put it in the mail? You dropped it in the mail November of 2015?
A. Correct. Correct.
Q. The purpose of this motion is -- is to lower your sentence; right?
A. Correct. You have a loss calculation done. Correct.
Q. And before you sent this motion in, you tried to get a lower sentence other ways; is that right?
A. Not that I --

Q. Well, did you send --
A. I don't understand what you mean.
Q. You sent letters out across the country trying to cooperate in various cases. You sent letters to the SEC; right?
MR. SCHAD: Your Honor, I'm going to object --
A. Correct.
MR. SCHAD: -- to relevance at this point.
MS. GLATFELTER: Your Honor, it goes to motive. It goes to the motive for him and his credibility determination here. He's trying to get a lower sentence through this and he'll send out letters to whomever and try -- and try to accomplish that in whatever way he can. It goes to his motive and testimony here and his credibility as he testifies.
THE COURT: I'm going to sustain the objection. It's obvious what Mr. Galemmo's motivation is here.
A. Yeah. So -- so repeat -- repeat the question.
MR. SCHAD: Glen, it was sustained. You don't have to answer that question.
THE WITNESS: Okay. You can tell I don't know the law.
Q. Mr. Galemmo, you pleaded guilty to Wire Fraud and Money Laundering; right?
A. Correct. Correct.
Q. The conduct underlying those offenses was basically

operating a Ponzi scheme?
A. And I have issues with that at this date.
Q. Okay. The plea agreement specified that you operated it for a number of years; is that right?
A. Correct.
Q. And during that time you lied to your investors?
A. Correct.
Q. Some of those investors went to the same church as you did?
A. Correct.
Q. You lied to the banks to get money for property?
A. I was told to lie to the banks in order to get the property.
Q. So you lied to the banks to get property?
A. Correct.
Q. You lied to your employees?
A. Correct.
Q. And you lied to your spouse and kids about your income?
A. Correct.
Q. You lied to your father and siblings to get their money?
A. Your Honor, and the Court, there was never any malicious attempts to hurt anybody in the situation.
And I believe I've got enough testimony in front of Judge Beckworth [verbatim] to prove that it was a loss calculation that was done that would show the Court more money went out to

the clients than came in, per the Government's claim.

So my answer to that is I didn't sit in an office and try and hurt people. There was never any intention of that. And if the Court would just do a loss calculation based on the fact that Agent Shorten had admitted to Ben Dusing -- she admitted this fact to Mr. Dusing -- 90 percent of all the money that came into the fund went back out to the clients.

So the fact that what you're trying to do here is make it look like I'm out here trying to kill people, that wasn't the point. We don't even have the facts in front of the Court and, yet, they come in front of the Court. And I also say, again, I signed the plea agreement without having the *Brady* material. I didn't know the numbers. I know the numbers now, and I'm looking forward to presenting those to the Court.

Q. Mr. Galemmo, did you lie to your father and siblings to get their money?

MR. SCHAD: Your Honor, I'm going to object at this point. I think we have the gist of the issue on what Mr. Galemmo pled guilty to and agreed to in the Statement of Facts with regards to this matter. And we understand what -- what the Government is trying to prove in terms of his lying in the past that resulted in the offenses of conviction in this case and we stipulate to that.

THE COURT: Your client doesn't seem much inclined to stipulating, Mr. Schad.

Q. Well, let me ask it this way. I have just a few more questions about -- about the past and we'll move on.

But to keep your business operating and functioning, you said basically whatever was necessary to get the money; you spun the facts however you needed to; is that right?

A. I told -- I went and told people, asked people, to invest money, along with numerous other people who brought in large sums of money into the fund, people besides myself. I told them what the plan was and what we were trying to do to earn them money. We made every effort of doing that. And that's why I can say to you today, and I couldn't say this at the time of the plea agreement, I could not say this in the courtroom, I believe more money went out to the clients than came in.

Q. So at this point today you -- you disagree even that you were running a Ponzi scheme? As you sit here today, you have a problem with the Statement of Facts?

A. Absolutely.

Q. Okay. We'll move on.

I want to -- I want to talk about your petition for a minute.

You said immediately after the sentence was announced, you testified here today and you've said in your petition, you claim you told your attorneys you wanted to appeal immediately; right?

A. First of all, I told Mister -- I looked to my right and I was very upset and I told Mr. Dusing, and I'll say this again, I've already said it earlier, based on what happened in the judge's chambers, which you were present there, when the judge told me that if we need the Government to provide the burden of proof on the restitution numbers, it was going to be very bad for me. And the fact a restitution number was used as a loss calculation that -- I looked at Mr. Dusing and I said, "We're gonna fight this. We're going to appeal that." We had huddled up. And the first time the word "appeal" came up, came up, it wasn't from me, it was from my counsel. I don't recall which one.
Q. Okay. And right after that you were taken into marshals' custody where you were held and you couldn't communicate with your attorneys at all; is that right?
A. Absolutely incorrect. We sent a letter to the Court. I obviously have someone typing this, and the judge -- and helping here, doing this document, that's pretty obvious. That was a mistake on our part. We sent a letter to, I believe, the Honorable Judge Beckwith stating that, that that was a mistake, and there are a couple other mistakes. But --
Q. So when you said that you were taken into marshals' custody where you couldn't communicate with your attorneys and that's why your -- why the 2255 was delayed, that wasn't true; correct?

A. Correct. And we corrected the mistake immediately.
Q. And your petition that you filed was under -- was under the penalty of perjury; right? You signed it under penalty of perjury?
A. Correct.
Q. All right. And in your petition you accuse Ms. Hayden and Mr. Dusing of refusing to file a notice of appeal, a refusing to file one?
A. I asked Mr. Dusing in a 20-minute conversation -- over and over again I stated the fact I asked Mr. Dusing to do it. He did not do it.
Q. Well, I want to be clear about the specific language and the accusations you're making.
On page 2- -- PAGEID 2368, you say they refused to file an appeal. "When Petitioner instructed Counsel Dusing and Hayden to address factual discrepancies and increased sentencing ranges on direct appeal, they refused to do so."
Right?
A. In my opinion, correct. And as I sit here today, Mr. Dusing -- I told Mr. Dusing what I wanted and he did not do it. I don't know how else to state that.
Q. Well, but, you also have the e-mail from Angela Hayden saying, "We will file a notice of appeal for you." That's not a refusal.
MR. SCHAD: Objection; Your Honor: Argumentative.

THE COURT: Sustained.
Q. Now, since you filed your 2255 in November of 2015, you filed some other motions; is that right?
A. Absolutely.
Q. You filed a motion for a hard copy of the sentencing transcript?
A. Correct.
Q. And in that motion you outline your arguments about the loss calculation and the restitution; is that correct?
A. Correct.
Q. And in that discussion you say, quote, "The $87 million claimed by the government that came into the fund is not possible and is completely misleading." You disagree --
A. Yes --
Q. -- the 87-million figure?
A. I -- I disagree with that, because Agent Shorten testified in the sentencing transcript to the fact that $29 million was done in loans, and I clearly stated to my own attorney before the sentencing hearing that the number was off by 40-, $50 million. And, obviously, my attorney didn't either read the e-mail or would have questioned Agent Shorten about that when she was on the stand.
Q. All right. So you disagree -- I'm just asking a yes-or-no question. You disagree with the $87 million figure; right?
A. Correct.

Q. But you recall signing your plea agreement; correct?
A. Correct, but I signed the plea agreement without having 3,000 pages of *Brady* material --
Q. You signed the plea agreement?
A. -- at the time.
Q. Mr. Galemmo --
A. Okay.
Q. -- you signed the plea agreement. You said it was true and accurate?
A. At that time.
Q. Right. And on page 12 of your plea agreement, or PAGEID 2023, it says, "Galemmo received approximately $87 million cumulatively from individual investors, trusts," so on and so forth.
You signed that and then you testified that it was accurate under oath?
A. At the -- correct. And at that present time -- you're exactly right. But at this present time as I'm talking to you, it's wrong.
Q. You filed a motion for a full accounting; right?
A. Correct.
Q. And in that motion you made the statement -- you claim that the statement "The vast majority of the funds were never invested in anything" is false and misleading; is that right?
A. Correct.

Q. So when you signed that as language in your plea agreement that it was true and correct, were you lying?
A. I'm going to say, again and again, I needed -- we did not have enough information, or the information we had at that particular time was what I based signing that document on. Since then, and since the fact -- and this is the key fact in all this -- I was missing six-and-a-half years of bank statements, number one. Nobody --
    And the information, out there to be had, hadn't even gotten how much money was traded or invested. And I read it. And the fact the record today, what I asked -- what I told my attorneys to do, which they did not do. And again, those numbers have changed, since I've been able to spend thousands of hours going through the *Brady* material. It's over 3,000 pages. I did not have that at my disposal at the time I was told to sign the plea agreement.
Q. So the Statement of Facts that you signed and testified under oath that were true and accurate you now disagree with?
A. The *Brady* material will show without a doubt --
    And the fact that Agent Shorten admitted to Mr. Dusing 90 percent of all the money that came in, went back out to the investors.
    -- would change those facts drastically.
Q. So that's a yes, you disagree?
A. Correct.

MS. GLATFELTER: All right. No further questions, Your Honor.

THE WITNESS: And at this time -- I want to make this clear; again, I want to make it very clear at the time that you're talking to me on this date, absolutely. At the time Judge Weber asked me those questions, I had to base my decision on what I had in front of me.

MS. GLATFELTER: No further questions.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. SCHAD:

Q. Mr. Galemmo, I'm going to try to refocus you on the issue at hand this morning and that is whether or not there was a notice of appeal that was filed or should have been filed, so let's kind of return to that issue for a moment.

At the time that you received the September 15th e-mail from Angela Hayden, had you already unequivocally asked Mr. Dusing to file a notice of appeal on your behalf?

A. Absolutely.

Q. And when was that?

A. I believe it was the 30th of August. It was before the e-mails from Angela started flying my way. We had a simple 20-minute conversation, phone records will confirm that, and he took his time with me and explained the risks. At the end of the conversation, my exact words to Mr. Dusing is, "I do not care if I get a higher sentence, or whatever happens. I want to appeal the fact that a restitution number is not a loss number," and the fact I was sentenced using a loss table when a loss calculation has never been done. And if one is done, it's substantially in my favor. And Mr. Dusing understood all this and he said he would get back to me. I'm sitting here in front of everybody today waiting -- and I got the e-mail to Mr. Dusing; he never responded. The only one who's responded to any of my requests was Angela.

Q. Okay. And if I can refer you to -- it's tab 21, which is the second day of the sentencing hearing. Can you get that in front of you? You had it in front of you earlier during the cross-examination. It's page 30 --

A. I have it.

Q. -- PAGEID 3036.

A. 3036. Okay.

Q. And I would just like you to read to yourself -- it's lines 2 through 7 -- or 2 through 9, actually.

A. Page 30? Say the pages again.

Q. It's PAGEID #3036. It's -- on the transcript number, it's transcript page 177. Should be under your tab 21.

A. Tab 21. The second day?

Q. Yes.

A. Okay. Say it one more time. I'm sorry.

Q. Are you to the page 30 --

A. I'm not.
Q. Okay. 3036. Also says page 54 of 56 on it. And it also says, to further confuse matters, page 177.
A. I'm on Doc 156, page 3031 --
Q. This is actually Document 157.
A. That's the problem. I apologize.
Q. You probably had it right in front of you, Mr. Galemmo, because you were crossed on it a few minutes ago.
A. The question is where did I put it? I'm not finding it. I apologize.
MR. SCHAD: Okay. Your Honor, I know it's a little bit out of turn; could I read it to him?
THE COURT: Sure.
MR. SCHAD: Thank you, Your Honor.
Q. I'm just going to read this to you, Mr. Galemmo, and then we'll --
A. Thank you.
Q. -- and then we'll talk about it.
It says:
"THE COURT: And you must file within 14 days after the J and C is filed, I believe.
"MR. DUSING: Your Honor, we recognize our right to appeal, and you have my representation that I will address the appellate issue.
"THE COURT: And you understand that only the Circuit

can release you from that obligation?
"MR. DUSING: I do, Your Honor."
Do you recall that?
A. Correct.
Q. Okay. So on cross-examination you were asked about that you could have filed a notice of appeal on your own behalf or you could have the court do so.
Was it your understanding, though, at the time that the notice of appeal could have been filed that you were being actively represented by Ben Dusing still?
A. Absolutely.
Q. And, as a matter of fact, he didn't relieve himself of representation of you until November of 2014?
A. I believe the letter says November 2017, but I could be wrong. Correct.
Q. And you were in court when Mr. Dusing told the Court himself that he would take care of addressing the appellate issue?
A. Yes.
Q. And is there any doubt in your mind that you informed Mr. Dusing, without equivocation, that you wanted to appeal from the sentence imposed?
A. Mr. Schad, we had a 20-minute conversation that -- and I went through the steps, as I did earlier and I won't painfully do it again here, but I wanted to appeal. The restitution

number was incorrect. The Court took away my opportunity to prove that then. And the fact I was sentenced on a loss table when there's no loss table ever been done. And I said that to Mr. Dusing. I brought up some other things that irritated Mr. Dusing, like the fact I didn't have the *Brady* material and I signed the plea agreement. And like I testified today, it changes the number drastically, and I put that in front of the Honorable Judge Beckwith already in several different documents. There's no way Mr. Dusing did not know I wanted to appeal.

MR. SCHAD: I have no further questions, Your Honor.

And we would rest at this time, unless there is any further cross.

MS. GLATFELTER: No, there's no further cross.

THE COURT: Ms. Glatfelter, do you want to put any witnesses on?

MS. GLATFELTER: Yes. I'd like to call Ms. Hayden.

THE COURT: Does anyone need a break before we press on?

MS. GLATFELTER: I'm okay.

MR. SCHAD: I'm okay.

THE CLERK: Please raise your right hand.

(Witness duly sworn by the Clerk.)

ANGELA HAYDEN, ESQ.

a witness herein, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. GLATFELTER:

Q. Ms. Hayden, did you represent Mr. Galemmo?

A. Yes, I did.

Q. When did you begin your representation?

A. I believe it was around June, July of 2013.

Q. And was there another attorney from your firm representing Mr. Galemmo?

A. Yes, Mr. Dusing.

Q. Okay. Did you work together?

A. Yes.

Q. Were you personally involved in representing Mr. Galemmo?

A. Yes, I was.

Q. Can you generally describe your communication with Mr. Galemmo during your representation?

A. Whenever there were meetings, I was present for most of those meetings, if not all of those meetings, so those were in-person contact. Those were strategic meetings, that sort of thing. Substantive meetings. We communicated by phone and also by e-mail.

Q. And when you had these meetings, who was present in the meetings when you were --

A. Generally myself, Mr. Dusing, and Mr. Galemmo.

Q. And when you would have conference calls with Mr. Galemmo,

who was present on the conference calls?
A. If I was on the call, sometimes Ben was also on the call. Sometimes I took calls from Glen just myself. I was a little easier to reach sometimes, I think.
Q. How many times a week did you communicate with him, would you estimate?
A. There were really more like pockets of communication as things were developing throughout the case. So, you know, when we were evaluating the plea, there was more communication then; probably, you know, daily, every other day, something like that. When we were preparing the Sentencing Memorandum, there was more communication then too. So I really couldn't say, you know, that I talked to him once a week or anything like that, but just depended on where the case was.
Q. How often would you communicate by e-mail?
A. Fairly frequently. That was an easy way to communicate when we were preparing the Sentencing Memorandum, so we did that fairly frequently then. I think that's when the e-mail communication picked up, was when we were in that phase.
Q. And was it your normal practice to cc each other on the e-mails, whoever was responding?
A. Mr. Dusing and myself?
Q. Yes.
A. Yes.
Q. Now I'd like to direct your attention to August 27th and

28th of 2014, which is the sentencing of Mr. Galemmo. Was he detained between his plea and sentencing?
A. No, he was not.
Q. Was he detained immediately after sentencing?
A. No, he was not.
Q. To your knowledge, when did he report?
A. Sometime in early October of '14.
Q. During the time between sentencing and his report date, how did you communicate with him?
A. E-mail and telephone.
Q. How often, do you think?
A. Hmm, in that time frame we were scheduling a deposition in the civil case so there was some contact for that, and then we were discussing, you know, the outcome of the sentencing. I mean, I think there were maybe three or four e-mails and a couple of phone calls in that interim.
Q. Were you the primary contact after sentencing?
A. I feel like I was. I don't know what contact he had with Mr. Dusing, but I was handling the deposition scheduling and communicating with Mr. Galemmo about -- answering his questions about what had happened at the sentencing.
Q. I want you to turn in your exhibit book to Exhibit No. 10, and if you can look at the second page.
A. Yes.
Q. I want to focus on this e-mail in a few minutes, but for

right now let's talk about the date there. It's September 15th?

A. Yes.

Q. How long was that after sentencing?

A. I believe that was --

After sentencing or after the judgment entry?

Q. Just roughly. Either is fine.

A. It was 13 days, I think, after the judgment entry.

Q. All right. Can you tell us about the communication in between sentencing and the time that you sent this e-mail to Mr. Galemmo?

A. We had some e-mail communication. Mr. Galemmo had some questions about -- he was particularly, I think, upset with the loss amount that the judge had decided on, so we had some communications about that. He had asked if there was anything we could do about it.

We discussed at that point, and this is via e-mail, the appellate waiver and kind of what our recommendation was in that regard given the appellate waiver.

During that time we were also discussing the fact that he was gonna have to sit for a deposition in the civil case.

Q. All right. What was your recommendation regarding appeal?

A. Well, since the sentence was a hundred and eighty-eight months, the appellate waiver said that as long as the sentence was a hundred and eighty-eight months or less, that he had waived appeal. So Ben and I had discussed that, and it was our advice that an appeal wouldn't be -- wouldn't be fruitful because of the waiver and because of what his sentence was.

Q. When you had these discussions, was he focused on the 188-month term of incarceration?

A. I don't know that he was focused on that. I think he was more focused on the amount, the loss amount, and the impact that he believed that had on his sentence. But I explained to him that even if at the lower loss amount, the hundred and eighty-eight months was still within that guideline range. It was the top of that range, but it was still within it, and it was the bottom of the next one. So I believe we had some communication about that even if he were re-sentenced, it could potentially be the same sentence.

Q. So was the loss amount in terms of his -- determining his sentencing guideline level which determined his sentence?

A. Correct.

Q. And that was the focus of the discussions?

A. Yes.

Q. If you can look in your book, Exhibit 13, and PAGEID 2625.

A. Okay.

Q. All right. And is that an e-mail that you received from him?

A. Yes.

Q. The first line of the e-mail is about what?
A. Asking if there's anything that can be done to reduce the 188 months.
Q. Now, the e-mail that we were looking at in Exhibit 10, which is September 15th --
A. Yes.
Q. -- I want you to go ahead and read that e-mail into the record.

MR. SCHAD: I'm going to object, Your Honor. The e-mail speaks for itself and we communicated it several times already and it's an exhibit in this case. She can testify about it, but there's no need to read it into the record.

MS. GLATFELTER: I can ask her specific questions, if that would be easier that way, but that's fine.

THE COURT: It's so short, we've had a longer discussion about whether it should be read into the record than it would take to read it.

Q. The first line of the question --
Well, let me ask you this: What was the purpose of the e-mail that you sent?
A. The e-mail was sent -- Glen and I had had-- I'm sorry. Mr. Galemmo and I had had a telephone conversation preceding this e-mail pretty close in time. I can't recall if it was the same day or the day prior, but I think it was the same day. And I was meaning to summarize that phone call and just

make sure that he understood that the deadline was the next day; if he changed his mind about an appeal, that we needed to know.

Q. All right. And tell us about the phone conversation you had with Mr. Galemmo preceding this e-mail.

A. The phone conversation was meant, you know, to address the fact that the deadline was the following day, and I just wanted to check in with him one more time to make sure that he didn't want us to file a notice of appeal. So that was --

That conversation, we had the same discussion basically that we had had already that there was a waiver, that the sentence was within the, you know, the parameters that kicked the waiver in, that we didn't think an appeal would be productive or successful.

I also, you know, had told him, on more than one occasion, if he wanted to speak to another attorney about it, that he was welcome to do that. So it was just a recap of our prior discussions and just sort of nailing down whether or not he wanted us to file an appeal anyway, despite what our recommendations had been.

Q. And on that phone conversation, despite your recommendation, did he want to file an appeal?

A. No, he did not.

Q. What did he say?

A. I couldn't tell you exactly what he said, but I know that

when I hung up that phone, I knew we were not to file an appeal. But I sent the e-mail anyway because he still had another day, he could have changed his mind, and I wanted to make sure he knew that he had, you know -- if he was going to change his mind, this is when we needed to know.
Q. Now, did Mr. Galemmo ever respond to this e-mail?
A. Not that I recall.
Q. Mr. Galemmo claims in his filings that he didn't respond to you because you were a law clerk or a legal secretary for Mr. Dusing. Can you comment on that, or can you tell us whether you were a legal secretary?
A. I am not a legal secretary or paralegal. I'm an attorney. I can't speak to what -- how Glen viewed me. I can speak to the fact that my role in the case was always as sort of a second chair to Mr. Dusing. I mean, I was in all the substantive meetings. I had substantive contact. I can't say what he thought, but that was not the nature of the relationship at all.
Q. You had substantive discussions with Mr. Galemmo on your own?
A. Yes.
Q. And did you ever appear in court by yourself with Mr. Galemmo or appear for a type of proceeding?
A. I mean in the civil case, I was with him at his deposition --

Q. Okay. That's what I was referring --
A. -- and also the -- there was a hearing the day before the sentencing that I went to by myself. Mr. Galemmo didn't attend it. It was --
Q. About the forfeiture?
A. Yeah. Yeah. And I remember it well because Judge Weber wasn't happy that it was just me. So --
Q. He was not happy that Mr. Galemmo was not there?
A. Correct.
Q. Now, the deposition you referred to, that happened after you sent out this e-mail?
A. Yes.
Q. And were both you and Mr. Dusing there?
A. At the deposition?
Q. Correct.
A. No, just me.
Q. Did you talk to him? Did you talk to Mr. Galemmo during those days?
A. Yes. I mean, we were together for two full days. We spoke.
Q. Did he ever mention his appeal to you during that time?
A. No, he did not.
Q. Did he tell you about arguments he wanted to make on appeal?
A. No.

Q. Did he ask for any copies of anything having to do with the appeal?
A. No.
Q. What happened at the end of the deposition?
A. I remember we walked to the parking garage together --
Well, before we left the office, I had some paperwork for withdrawals from the civil cases that I needed him to sign so that we could file the appropriate motions because the representation was ending.
So at the office where the deposition took place, I explained those documents to him. A notary came up from that office and notarized his signature. Then we walked to the parking garage together and, you know, he was going to his car and I was going to mine. I didn't really know what to say to him at that point. I felt bad he was getting ready to go to prison, but I didn't really know what to say, so he said good-bye and I said good luck and that was that.
Q. And he went to prison shortly after that?
A. Yeah. I think within a week or so.
Q. Ms. Hayden, did he ever ask you to file an appeal in this case?
A. No, he did not.
Q. Did he ever ask you to file a notice of appeal?
A. No.
Q. To your knowledge, did he ever ask Ben Dusing to file?

A. Not to my knowledge, no.
Q. Did you ever refuse to file an appeal for him?
A. No.
Q. Did you ever tell him you were not filing a notice of appeal because he owed your firm money?
A. No.
Q. Did you work for free for a period of time for him and his wife?
A. Yes. Once the money in trust ran out, we continued on the case, and I still continue to represent his wife now and we're not being paid for that.
Q. If he had asked you at any time to file an appeal, what would you have done?
A. We would have filed a notice of appeal and then moved to withdraw.
Q. Okay.
(Government Counsel confer privately.)
Q. Did he ever say to you at any time that he had asked Mr. Dusing to file an appeal?
A. No.
Q. And did Mr. Dusing ever tell you anything about an appeal?
A. No.
MS. GLATFELTER: No further questions.

CROSS-EXAMINATION

BY MR. SCHAD:

Q. Good -- I believe it's afternoon at this point, Ms. Hayden.

Is there any question in this case that Ben Dusing was the lead counsel for Mr. Galemmo?

A. No, there's no question.

Q. Okay. And that he made the final decisions with regards to how the criminal case occurred, other than those decisions that Mr. Galemmo would have to make himself?

A. Correct. I mean, when big strategic decisions were made, we would discuss them, you know, consult on them. But, I mean, I wouldn't make a big strategic decision without Ben, no.

Q. And would you consider pursuing an appeal in this matter to be a big strategic decision that you would have discussed with Mr. Dusing?

A. Yes.

Q. Okay. Now, let me ask you: At the time that you represented Mr. Galemmo, I guess it was 2013 through November of 2014, at that time how many federal criminal cases had you handled as defense counsel in the Southern District of Ohio?

A. Let's see; I have to think. I think probably four at that point.

Q. Okay. And how many appeals to the Sixth Circuit Court of Appeals had you handled?

A. Just me personally --

Q. Yes.
A. -- myself?
Q. Yes.
A. I think one at that point.
Q. Okay. All right. So I want to talk to you a little bit --

And you would agree with me that through the course of the e-mails, and you can take a look at those e-mails from September 1st through September 15th --
A. Uh-huh.
Q. -- 2014, you provided Mr. Galemmo with advice with regards to the viability of an appeal?
A. I would say so, yeah. It was more about the waiver.
Q. Yeah. I mean, it was your advice with regards to the waiver?
A. Right, after consulting with Mr. Dusing.
Q. Sure.

So let's go to Document 1, which is the plea agreement in this case, and let's see -- it's going to be page number -- it's page 5 of 16 PAGEID No. 16 on Document 1.
A. I'm sorry, what's the PAGEID?
Q. It's PAGEID 16.
A. Okay.
Q. And you'll see under there No. 9, Waiver of Appeal?
A. Yes.

Q. Do you need to read that and refamiliarize yourself with that for a second?
A. Sure. Just give me a second.
Q. Sure.
(Witness reading a document.)
A. Yes, I read it.
Q. Okay. So your advice to Mr. Galemmo with regards to pursuing an appeal was based in large part on this document and in particular this provision No. 9; is that correct?
A. Yes.
Q. Okay. So I want to talk to you a little bit about what your understanding was at the time of what this appeal -- what was waived by this Waiver of Appeal --
A. Uh-huh.
Q. -- document, okay?
So is it a full appellate waiver or was it a limited appellate waiver?
A. It was a limited appellate waiver.
Q. Okay. So if it's a limited appellate waiver, what is still available for appeal, your understanding?
A. Well, I would go by the language in the plea agreement, that, you know, if his sentence had exceeded a hundred and eighty-eight months, he could appeal that. That if he had, you know, allegations about ineffective assistance of counsel, I think there're very limited things that you need to raise on

direct appeal in that regard, but I guess those could have been explored with other counsel.

Q. How about prosecutorial misconduct?

A. Right. That's in the language there too.

Q. Is that -- okay.

How about -- how about if the restitution exceeded the statutory limit?

A. I would think that you couldn't because the sentence didn't exceed a hundred and eighty-eight months. That's how I would read that. I would obviously want to look into that further if there had been discussion about appealing the restitution amount.

Q. So at the time that you were giving him advice with regards to this appellate waiver, you would have not been familiar with a case called *United States versus Freeman* which basically states -- from 2011; it's a Sixth Circuit case -- that says you can appeal the restitution order if it violates the statutory maximum --

MS. GLATFELTER: Your Honor, I'm going to object at this point.

MR. SCHAD: I'm asking whether she understands.

MS. GLATFELTER: It's outside the scope and relevancy.

THE COURT: I'm lost on the relevance, Mr. Schad.

MR. SCHAD: Well, let me see if I can break it down.

The relevance is Ms. Hayden already said that she provided advice to Mr. Galemmo on whether or not he had an appeal in his case. She provided him advice. So I'm trying to determine what her knowledge was at the time she provided that advice, because that goes into whether or not he should have -- he could have filed a notice of appeal in this case.

THE COURT: Okay. I agree. I'll sustain the objection. I don't think that's a question that we need to answer here or that's relevant to the inquiries here.

Q. Okay. Then let's go to -- if you have in front of you 13, tab No. 13. And I want you to go to -- it's 2626, is the PAGEID.

A. Okay.

Q. And this is an -- I think you've already identified it's an e-mail you wrote to Mr. Galemmo?

A. Yes.

Q. And the first paragraph, if you want to take a quick read of that --

(Witness reading a document.)

A. Okay.

Q. Okay. And that -- that is part of the advice that you provided to Mr. Galemmo with regards to whether or not he had an appeal or not; correct?

A. I mean, I think I'm reminding him about the waiver and also letting him know the possibility of, you know, having it

-- you know, even if he were successful, having it sent back and possibly getting a higher number.

Q. If he had appealed only the restitution order, could he have received a larger sentence on appeal?

MS. GLATFELTER: Objection, Your Honor: Relevancy.

MR. SCHAD: This goes to the heart of the advice that she provided with regards to the appeal, Your Honor. It's the crux of the hearing.

THE COURT: The questions we need to answer are did Mr. Galemmo direct counsel to file a notice of appeal, and, second, when did he discover that no appeal had been filed. The merits of an appeal are not pertinent at this point.

MR. SCHAD: Thank you, Your Honor.

THE COURT: Sustained.

BY MR. SCHAD:

Q. Do you know whether or not there was an objection to restitution at sentencing?

A. I don't believe there was. I don't honestly recall, but I don't believe there was.

Q. You had -- your office had sent Mr. Galemmo an e-mail indicating that he was out of funds at the time and that there was actually roughly 49,000 that was owed to him after the sentence -- or owed to you after the sentencing. Do you recall that?

A. That doesn't sound like an e-mail I'd write. I'm usually

not in the finances. But I don't know.
Q. Let me have you flip over three pages.
A. Okay.
Q. It is PAGEID #2631. I'm sorry, not three pages.
A. 2631?
Q. Yes.
A. Okay.
Q. If you can just take a look at that for a moment.
A. Yes, I see it.
Q. And do you know who Debbie Ionna is?
A. Yes.
Q. Okay. And does that refresh your recollection? Did you know whether you had exhausted your funds at the time of sentencing?
A. I would not have been familiar with these numbers. I think I had a general awareness that we were pretty close to out of money on the case. Just -- I mean, that's something that I don't typically need to worry about because I don't handle the finances.
Q. You had indicated on direct appeal [verbatim] that if he had requested to file a notice of appeal, you would have filed a notice of appeal and a motion to withdraw?
A. Yes.
Q. Is that because he didn't have funds to retain you for purposes of the appeal?

A. I don't know the reasoning behind that. I do know that that was what Mr. Dusing and I discussed.
Q. Okay. So that actually didn't come from you; that came from Ben Dusing?
A. That we would withdraw.
Q. Okay. That you would withdraw?
A. Right.
Q. Okay. How many conversations did you have with Ben Dusing between sentencing and let's say the September 15th letter or e-mail with regards to whether or not you were going to appeal Mr. Galemmo's case?
A. I don't know. I don't think a lot. I know one for sure before I sent the September 15th e-mail and one probably right after sentencing, just kind of postmortem the situation and just discuss if there was anything that we could be doing. We didn't -- beyond that, I don't recall any.
Q. Okay.
A. And I couldn't tell you really about the first one that -- you know, when that happened. But I remember specifically the one before I sent the September 15th e-mail.
Q. Were you present during a -- during a meeting that was had at your office between Ben Dusing, Mr. Galemmo, and Mr. Galemmo's family right after the sentencing hearing?
A. I recall Mr. Galemmo and his family returning to our office after the sentencing and everyone kind of just sitting

around and processing what had happened. I do not believe I was in that room the whole time, but -- I remember them being there, but I do not recall what was discussed.
Q. Okay. So you -- you don't have any recollection of whether an appeal was discussed?
A. I don't remember.
Q. Okay. So going back a few pages again, I want to ask you to go back to 2626.
A. Okay.
Q. Okay. So this is -- we've already discussed this a little bit. This is where you indicated you talk about the possibility of what can happen if there's an appeal.
A. Uh-huh.
Q. Would you have had a discussion with Ben Dusing before you authored that e-mail --
A. Yes.
Q. -- about that particular topic?
A. Yes. I mean, not specifically, you know, in response to this e-mail, but just generally Ben and I will discuss after a sentencing What can we do? You know, Are there any avenues here? And I think that kind of discussion happened, but I couldn't -- couldn't tell you word-for-word. It's typical --
Q. Sure. Turn -- I'm sorry; I didn't mean to cut you off.
Turn the page to the next page on 2627.
A. Yes.

Q. In this you provide information about the judgment and you said the deadline for the appeal was this date and if you want to discuss this matter with another attorney, please do so.

Do you recall whether or not you had another discussion with Ben Dusing about the appeal prior to sending this e-mail?

A. I don't think so.

Q. Okay.

A. I don't remember.

Q. Fair enough.

Then switch -- go forward a couple of pages to 2631, or no, I'm sorry, 2632 --

A. Okay.

Q. -- which is kind of our big one that we talked about --

A. Yes.

Q. -- quite a bit.

Between the last e-mail I showed you and the September 15th e-mail, would you have had a discussion with Ben Dusing during that time about the appeal?

A. Not substantively about the appeal. Ben and I discussed --

And I think it was right after I had been on the phone with Glen or it was right before, I honestly couldn't tell you.

-- we discussed Hey, does Glen want to file an appeal? We didn't talk about the merits of that appeal at that point, that we were sort of past that discussion. We talked about Hey, does he want us to file one? And Ben encouraged me to button that up and make sure we had the right answer to that so we knew if we needed to -- to file anything. And so, like I said, I don't remember if that discussion was before the phone call or between the phone call and the e-mail. But --

Q. Okay. And, to your knowledge, did -- between the date of sentencing when you all went back to your office --

A. Uh-huh.

Q. -- and the date of the September 15th e-mail, to your knowledge, were there any conversations between Ben Dusing and Mr. Galemmo?

A. You said between the post-sentencing --

Q. Correct.

A. -- back at the office and this e-mail --

Q. Yes.

A. -- were there any communications between Ben and Glen?

Q. Yes.

A. I don't know.

Q. Fair enough.

MR. SCHAD: I have no further questions, Your Honor.

MS. GLATFELTER: Nothing, Your Honor.

THE COURT: Okay. Thank you very much.

(Witness excused.)

THE COURT: Any other witnesses?

MS. GLATFELTER: No, Your Honor.

THE COURT: Any rebuttal?

MR. SCHAD: No rebuttal, Your Honor, and we're happy to submit on the record.

THE COURT: Okay. No closing argument or closing remarks?

MR. SCHAD: I mean, it's up to --

MS. GLATFELTER: I would like to.

MR. SCHAD: -- appellate couple.

MS. GLATFELTER: I would like to say a few words, but it's up to the Court. If the Court feels like it's --

THE COURT: I'm happy to have the benefit of your insights.

MR. SCHAD: Well, Your Honor, and I'm going to be -- if we're -- if we're going to have closing argument, I'll be really brief.

The issue before the Court is, obviously, whether or not Mr. Galemmo requested that a notice of appeal be filed and whether or not Ben Dusing failed to do so.

I think we've proven from the evidence that was taken here today that Ben Dusing informed the district court that he would protect Mr. Galemmo's appellate rights, that Mr. Galemmo had a right to rely on that.

As opposed to Mr. Galemmo filing a notice of appeal *pro* *se*, as opposed to Mr. Galemmo telling the district court that he wanted to appeal, he had a right to rely on Mr. Dusing when Mr. Dusing told Judge Weber that he would protect his appellate rights.

Now, we further have testimony directly from Mr. Galemmo that he had at least three conversations with Mr. Dusing after the sentence was pronounced in which he made it clear that he did want to appeal. He was very upset. He was obviously upset at the sentencing he received, there's no question about that, but that he wanted to appeal. And I think it maybe gets a little bit to the objection that was sustained by Your Honor, but it really doesn't matter what he wanted to appeal and it really doesn't matter whether he would have ultimately been successful on what he wanted to appeal. The only issue is did he ask for an appeal and did Mr. Dusing fail to file that notice of appeal on his behalf.

Mr. Galemmo has testified that he not only stated he wanted to appeal immediately after sentencing, but he also did so at a meeting after the sentencing with his family present and possibly Ms. Hayden president -- present, excuse me -- but also a day or two afterward they had a 20-minute conversation on the phone in which he made it clear that he wanted to appeal the case. Mr. Dusing at that point said, "Let's think about it for a few days." And while it's true that there were then e-mail conversations that went back and forth between

Mr. Galemmo and Ms. Hayden with regards to an appeal, that doesn't substitute Mr. Dusing's obligation to pursue an appeal when the last thing that he heard from his client is that he actually wanted to appeal. Once that happens, I think the law is very clear, the *Roe* case and beyond, that -- that once those magic words are said, a notice of appeal must be filed. And for those reasons, what we're asking for in terms of relief is that the judgment be re-entered so that he has his 14 days to file his notice of appeal, and then that resets the clock with regards to any appellate proceedings before the Sixth Circuit.

THE COURT: Okay.

MS. GLATFELTER: The gatekeeping question here today is really answered by this e-mail and the testimony provided about the e-mail.

The question is when did Mr. Galemmo find out that no appeal was going to be filed on his behalf and whether he asked for an appeal to be filed on his behalf.

So the gatekeeping question in terms of the timing is the September 5th [verbatim] e-mail. Mr. Galemmo -- well, Angela Hayden testified that she sent this e-mail. Mr. Galemmo testified that he received it and he didn't respond to it. And everyone agrees on the content of the e-mail, the e-mail date, and it says: "If you want to decide" -- "If you decide you want to appeal, we will file the notice for you and then withdraw. Based on your conversation, I understand you don't want to appeal. If you change your mind, let us know." No further contact. And the defendant here -- he confirmed today he received it, just as he did in his submission which was Exhibit 13 -- sorry -- in the book, document entry 145. He said he received it but never responded to the e-mail.

At that point, he knew there was no appeal being filed. And he responded to it like you would expect someone who didn't ask an appeal to be filed. He never reached out to counsel after receiving this e-mail. He never reached out to Mr. Dusing. He never reached out to Ms. Hayden. He never e-mailed them. He never called them. He never asked for a copy of anything. He sat at a deposition. And both Mr. Galemmo and Ms. Hayden responded he sat at a deposition two weeks later and said nothing -- nothing about an appeal. How odd is that to sit next to someone for two days at a deposition and not ask the question that's burning to him about the hundred and eighty-eight months? And that's really what he's concerned about, is the time of imprisonment. This thing about the numbers and all this other stuff is important to him to the point that it affects his sentence and the driving force of whether it's -- whether it affects his guideline offense level.

And I think we have two different stories here. We heard from the defendant and he says that he asked for an appeal to be filed and he gave us times where he supposedly had those conversations, and we've heard from two distinguished members of the bar who said emphatically today no appeal was filed because he never asked for it. They talked about it several times. Ms. Hayden went through today just now the times that she asked -- or they spoke about whether a notice should be filed, and she said they would file it. They had no issue filing a notice of appeal. They checked with him to make sure they didn't want to file -- or he didn't want to file a notice of appeal. So we have the two lawyers on one hand testifying about that issue and then we have Mr. Galemmo who, you know, is -- has been convicted of running a Ponzi scheme of over a hundred million dollars, someone who's lied to, you know, close friends and family throughout the scheme, and there's evidence that he's lied in his submissions to the Court. Most recently, his own petition signed under penalty of perjury talks about how he was immediately taken into custody and that his counsel refused to file. We have the subsequent filing where now today he's confirming he's stepping back from the Statement of Facts. He doesn't agree the Statement of Facts are even accurate, which he testified were truthful in prior filings -- or, sorry, prior times under oath.

So those are the two diametrically opposed stories that we have regarding whether an appeal was asked to be filed. The answer to that question is no. And so we ask the Court to find, first, that his petition is untimely and should be denied and, second, that he never asked for an appeal to be filed.

MR. SCHAD: Your Honor, just a very brief rebuttal.

How many times does Mr. Galemmo have to ask? That's the question. It is true he did not respond to the September 15th e-mail, but that was only after he had already inquired about an e-mail on several occasions, and even e-mail evidence shows you that because on the September 1st e-mail he says, "What can I do about the hundred and eighty-eight-month sentence?" and then there's this response by Ms. Hayden at that point. Somewhere in that conversation there's a 20-minute phone conversation with Ben Dusing about an appeal at that point. So, yes, by September 15th, he had stopped responding to his counsel about the issue, but it wasn't for lack of trying and not for lack of trying to get them to file the notice of appeal on his behalf.

THE COURT: Okay. Well, you'll receive a decision shortly. All right.

THE CLERK: All rise. (1:17 P.M.)

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PROCEEDINGS CONCLUDED

- - -

I N D E X

WITNESSES:	Direct	Cross	RD
BENJAMIN G. DUSING, ESQ.	7	21	30
GLEN GALEMMO	33	51	77
ANGELA HAYDEN, ESQ.	81	92	--

E X H I B I T S

	Identified
Joint Exhibit No. 1	9
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CLOSING ARGUMENTS:	
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C E R T I F I C A T E

I, Mary Ann Ranz, the undersigned, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Mary Ann Ranz

Official Court Reporter